

1. Definitions

- 1.1 **“ACE”** means ACE Materials Handling Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of ACE Materials Handling Pty Ltd.
- 1.2 **“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.
- 1.3 **“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.
- 1.4 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. **If the Customer does not wish to allow Cookies to operate in the background when using ACE’s website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.5 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting ACE to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
(c) if the Customer is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
(d) includes the Customer’s executors, administrators, successors, and permitted assigns.
- 1.6 **“Goods”** means all Goods or Services supplied by ACE 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).
- 1.7 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.8 **“Price”** means the Price payable (plus any GST where applicable) for the Goods as agreed between ACE and the Customer in accordance with clause 7 below.

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 or Services.
- 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 or Services on credit shall not take effect until the Customer has completed a credit application with ACE and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods or Services requested exceeds the Customer’s credit limit and/or the account exceeds the payment terms, ACE reserves the right to refuse delivery.
- 2.6 Any advice, recommendation, information, assistance, or service provided by ACE in relation to Goods or Services supplied is given in good faith to the Customer, or the Customer’s agent and is based on ACE’s own knowledge and experience and shall be accepted without liability on the part of ACE. Where such advice or recommendations are not acted upon then ACE shall require the Customer or their agent to authorise commencement of the Services in writing. ACE shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.7 The Customer acknowledges and accepts that:
(a) ACE shall be entitled to:
(i) retain any parts and/or consumables replaced during the provision of the Services;
(ii) the right to retain all proceeds obtained from the sale of such parts and/or consumables to any auto recycler or salvage yard; and
(b) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, ACE reserves the right to substitute comparable Goods (or consumables and/or parts of the Goods) and vary the Price as per clause 7.2. In all such cases ACE will notify the Customer in advance of any such substitution, and reserves the right to place the Customer’s order and/or Goods on hold until such time as ACE and the Customer agree to such changes; and
(c) in the event that the Goods and/or Services provided by ACE are the subject of an insurance claim that the Customer has made, then the Customer shall be responsible for the payment of any monies payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by ACE and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.
- 2.8 Where the Customer requesting or organising ACE to provide Services is acting with or on behalf of any third party and that third party is intended to be responsible for the payment (or any part thereof) of the Price then in the event that the third party does not pay for the Services when due, the Customer acknowledges that they shall be liable for the payment of the Price as if they had contracted the Services on their own behalf.
- 2.9 In the event that ACE is required to provide the Services urgently, that may require ACE’s staff to work outside normal business hours (including, but not limited to, working through lunch breaks, weekends and/or Public Holidays) then ACE reserves the right to charge the Customer additional labour costs (penalty rates will apply), unless otherwise agreed between ACE and the Customer.
- 2.10 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. Specifications

- 3.1 The Customer acknowledges that:
(a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings, and weights stated in ACE’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 ACE; and

- (b) while ACE may have provided information or figures to the Customer regarding the performance of the Goods, the Customer acknowledges that ACE has given these in good faith and are estimates based on industry prescribed estimates under optimal operating conditions.

4. Errors and Omissions

- 4.1 The Customer acknowledges and accepts that ACE 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 ACE 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 ACE in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of ACE; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 4.3 In circumstances where the Customer is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Customer is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not) ("**Customer Error**"). The Customer must pay for all Goods it orders from ACE notwithstanding that such Goods suffer from a Customer Error and notwithstanding that the Customer has not taken or refuses to take Delivery of such Goods. ACE is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Customer Errors.

5. Change in Control

- 5.1 The Customer shall give ACE 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 ACE as a result of the Customer's failure to comply with this clause.

6. Credit Card Information

- 6.1 ACE will:
- (a) keep the Customer's personal details, including credit card details for only as long as is deemed necessary by ACE;
 - (b) not disclose the Customer's credit card details to any third party;
 - (c) not unnecessarily disclose any of the Customer's personal information, except in accordance with the Privacy Act (clause 20) or where required by law.
- 6.2 The Customer expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due and outstanding by the Customer, ACE is entitled to immediately charge the Customer's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Customer pursuant to the terms of this Contract.

7. Price and Payment

- 7.1 At ACE's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by ACE to the Customer; or
 - (b) ACE's quoted Price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 7.2 ACE reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, availability of parts, further faults which are found upon disassembly and/or further inspection, work outside normal business hours, etc) which are only discovered upon commencement of the Services; or
 - (d) in the event of increases to ACE in the cost of labour, Goods, parts, or fluctuations in currency exchange rates, which are beyond ACE's control; or
 - (e) if ACE has been requested by the Customer to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Customer irrespective of whether or not the repair goes ahead.
- 7.3 Variations will be charged for on the basis of ACE's quotation, and will be detailed in writing, and shown as variations on ACE's invoice. The Customer shall be required to respond to any variation submitted by ACE within ten (10) working days. Failure to do so will entitle ACE to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 7.4 At ACE's sole discretion, a non-refundable deposit may be required.
- 7.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by ACE, which may be:
- (a) on delivery of the Goods;
 - (b) thirty (30) days following the end of the month in which a statement is posted to the Customer'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 Customer by ACE.
- 7.6 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 ACE.
- 7.7 ACE may in its discretion allocate any payment received from the Customer towards any invoice that ACE determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer ACE may re-allocate any payments previously received and allocated. In the absence of any payment allocation by ACE, payment will be deemed to be allocated in such manner as preserves the maximum value of ACE's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 7.8 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 ACE nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is

in dispute, then the Customer must notify ACE in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as ACE investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in ACE placing the Customer's account into default and subject to default interest in accordance with clause 17.1.

- 7.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to ACE an amount equal to any GST ACE must pay for any supply by ACE under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set-off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

8. Delivery of Goods

- 8.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at ACE's address; or
 - (b) ACE (or ACE's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 8.2 At ACE's sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.
- 8.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be Delivery to the Customer for the purposes of this Contract.
- 8.4 ACE 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.
- 8.5 Any time specified by ACE for Delivery of the Goods is an estimate only and ACE will not be liable for any loss or damage incurred by the Customer because of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. If ACE is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then ACE shall be entitled to charge a reasonable fee for redelivery and/or storage.

9. Risk

- 9.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer 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 Customer, ACE is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by ACE is sufficient evidence of ACE's rights to receive the insurance proceeds without the need for any person dealing with ACE to make further enquiries.
- 9.3 If the Customer requests ACE to leave Goods outside ACE'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.
- 9.4 ACE 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, ACE accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9.5 Where the Customer updates or upgrades any software or hardware that may interface with ACE's Goods without advising ACE, the Customer shall indemnify ACE of any loss or damage the Customer or the Customer's property, or possessions may incur as a result of the Customer's failure to advise ACE of any such update or upgrade that may affect the effectiveness of Goods.
- 9.6 ACE shall take all reasonable care and skill when undertaking the Services (including where ACE or its employees (at ACE's sole discretion) carries out tests on the Goods/machinery); but no liability will be accepted by ACE for (and the Customer indemnifies ACE against) any damage howsoever causes, except due to the express negligence of ACE or its employees.
- 9.7 The Customer 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 or hydraulic connections (including, but not limited to, meter boxes, main switches, circuit breakers, electrical cable, hoses and couplings) are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring) that ACE, or employees of ACE, reasonably form the opinion that the Customer's premises is not safe for the installation of Goods to proceed then ACE shall be entitled to delay installation of the Goods until ACE is satisfied that it is safe for the installation to proceed.
- 9.8 The Customer acknowledges and agrees that:
- (a) ACE is only responsible for parts that are replaced by ACE and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Customer agrees to indemnify ACE against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising;
 - (b) where ACE has performed temporary repairs on the unit that:
 - (i) ACE offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (ii) ACE will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair of the damaged unit; and
 - (c) Goods supplied may:
 - (i) expand, contract, or distort as a result of exposure to heat, cold, weather;
 - (ii) mark or stain if exposed to certain substances; and
 - (iii) be damaged or disfigured by impact or scratching.
- 9.9 ACE will not be liable whatsoever:
- (a) where the parts have not been stored correctly, not used other than the intended purpose or not installed as properly by the Customer or a third party installer as per ACE or ACE's recommendations;
 - (b) for any loss or damage to the Services that is caused by any other tradesmen after the completion of the Services;
 - (c) for delays caused by any other third party suppliers and/or contractors that impacts on the provision of the Services by ACE;
 - (d) for any defect or damage resulting from incorrect or faulty installation carried out by any other third party.
- 9.10 If the Customer instructs ACE to rectify any damage caused by any other tradesman, this will become a variation to the original quotation and will be charged at ACE's normal hourly rate.
- 9.11 It is the Customer's responsibility to ensure that the Customer's machinery is insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored at ACE's premises. The machinery is at all times stored and repaired at the Customer's sole risk.

10. Access

- 10.1 The Customer shall ensure that ACE always has clear and free access to the site to enable them to undertake the Services. ACE 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 ACE.
- 10.2 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks, hoist or other lifting equipment as may be deemed necessary by ACE.

11. Compliance with Laws

- 11.1 The Customer and ACE shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 11.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 11.3 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.

Modern Slavery

- 11.4 For the purposes of clauses 11.4 to 11.9:
- (a) “**Act**” means the *Modern Slavery Act 2018 (cth)*
- (b) “**Modern Slavery**”, “**Modern Slavery Statement**” and “**Reporting Entity**” have the meanings given by the Act.
- 11.5 If the Customer is a Reporting Entity, it shall comply with all of its obligations under the Act.
- 11.6 Whether the Customer is a Reporting Entity or not, the Customer shall:
- (a) use reasonable endeavours to identify, assess and address risks of Modern Slavery practices in its operations and supply chains;
- (b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;
- (c) use its reasonable endeavours to ensure that if at any time the Customer becomes aware of Modern Slavery practices in its operations and supply chains, the Customer must as soon as reasonably practicable take all reasonable steps to address or remove these practices;
- (d) provide to ACE a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and
- (e) within seven (7) days of ACE’s request (or such longer period as ACE agrees), provide to ACE any information or assistance reasonable requested by ACE;
- (i) concerning the Customer’s compliance with the Act;
- (ii) concerning the Customer’s operations and supply chains;
- (iii) to enable ACE to prepare a Modern Slavery Statement or otherwise comply with the Act; or
- (iv) to enable ACE to assess and address risks of Modern Slavery practices in its operations and supply chains.
- 11.7 The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and ACE will be able to terminate the Contract for any breach by the Customer.
- 11.8 The Customer warrants that any information supplied to ACE is true and accurate and may be relied upon for the purposes of the Act.
- 11.9 The Customer shall indemnify ACE against any loss or liability suffered by ACE as a result of the Customer’s breach of this clause 11.

12. Title

- 12.1 ACE and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid ACE all amounts owing to ACE; and
- (b) the Customer has met all of its other obligations to ACE.
- 12.2 Receipt by ACE 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 ACE on request;
- (b) the Customer holds the benefit of the Customer’s insurance of the Goods on trust for ACE and must pay to ACE 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 ACE and must pay or deliver the proceeds to ACE 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 ACE and must sell, dispose of or return the resulting product to ACE as it so directs;
- (e) the Customer irrevocably authorises ACE to enter any premises where ACE believes the Goods are kept and recover possession of the Goods;
- (f) ACE 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 ACE;
- (h) ACE 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 that have previously been supplied and that will be supplied in the future by ACE to the Customer, and the proceeds from such Goods.
- 13.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which ACE may reasonably require to;

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- (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, ACE 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 ACE;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of ACE;
- (e) immediately advise ACE of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales.
- 13.4 ACE 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 ACE, 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 ACE 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 ACE 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, and the Customer grants a security interest in all of its present and after-acquired property for the purposes of, including but not limited to registering ACE's security interest over the Customer on the PPSA, 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 ACE from and against all ACE's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising ACE's rights under this clause.
- 14.3 The Customer irrevocably appoints ACE and each director of ACE 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 eight (8) days of Delivery notify ACE 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 ACE 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**).
- 15.3 ACE 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, ACE makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. ACE'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, ACE's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If ACE is required to replace the Goods under this clause or the CCA, but is unable to do so, ACE 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, ACE'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 Customer by ACE at ACE's sole discretion;
 - (b) limited to any warranty to which ACE is entitled, if ACE did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 15.8 Subject to this clause 15, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 15.1; and
 - (b) ACE has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer'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.
- 15.9 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, ACE 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 Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) 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;
 - (d) the Customer failing to follow any instructions or guidelines provided by ACE;
 - (e) fair wear and tear, any accident, or act of God.
- 15.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to Delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by ACE as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer

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acknowledges and agrees that ACE has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 15.10.

- 15.11 ACE may in its absolute discretion accept non-defective Goods for return in which case ACE 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.
- 15.12 The conditions applicable to the warranty given on Goods supplied by ACE are contained on the “Warranty Documentation” that will be supplied with the Goods or Services.
- 15.13 Notwithstanding anything contained in this clause if ACE is required by a law to accept a return, then ACE will only accept a return on the conditions imposed by that law.
- 15.14 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 ACE has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of ACE. Under no circumstances may such designs, drawings and documents be used without the express written approval of ACE.
- 16.2 The Customer warrants that all designs, specifications, or instructions given to ACE will not cause ACE to infringe any patent, registered design or trademark in the execution of the Customer’s order and the Customer agrees to indemnify ACE against any action taken by a third party against ACE in respect of any such infringement.
- 16.3 The Customer agrees that ACE may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which ACE 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 ACE’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 ACE any money, the Customer shall indemnify ACE from and against all costs and disbursements:
 - (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Customer would be liable;in regard to legal costs on a solicitor and own client basis, internal administration fees, ACE’s Contract fees owing for breach of these terms and conditions’, including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 17.3 Further to any other rights or remedies ACE may have under this Contract, if a Customer has made payment to ACE, 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 ACE 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 ACE’s other remedies at law ACE shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to ACE shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to ACE becomes overdue, or in ACE’s opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by ACE;
 - (c) 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
 - (d) 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 ACE may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions ACE may suspend or terminate the supply of Goods to the Customer. ACE will not be liable to the Customer for any loss or damage the Customer suffers because ACE has exercised its rights under this clause.
- 18.2 ACE 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 ACE shall repay to the Customer any money paid by the Customer for the Goods. ACE shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 If the Customer cancels Delivery of Goods, the Customer shall be liable for all losses incurred (whether direct or indirect) by ACE 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 not be accepted once production has commenced, or an order has been placed.

19. Dispute Resolution

- 19.1 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.

20. Privacy Policy

- 20.1 All emails, documents, images, or other recorded information held or used by ACE is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. ACE 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”). ACE acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer’s Personal Information, held by ACE that may result in serious harm to the Customer, ACE 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 ACE in respect of Cookies where the Customer utilises ACE’s website to make enquiries. ACE 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 ACE when ACE sends an email to the Customer, so ACE may collect and review that information (“collectively Personal Information”)
- If the Customer consents to ACE’s use of Cookies on ACE’s website and later wishes to withdraw that consent, the Customer may manage and control ACE’s privacy controls via the Customer’s web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 20.3 The Customer agrees that ACE 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.
- 20.4 The Customer consents to ACE being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 20.5 The Customer agrees that personal credit information provided may be used and retained by ACE 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.
- 20.6 ACE 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.
- 20.7 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 ACE 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 (provided ACE is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and ACE has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of ACE, 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).
- 20.8 The Customer shall have the right to request (by e-mail) from ACE:
- (a) a copy of the Personal Information about the Customer retained by ACE and the right to request that ACE correct any incorrect Personal Information; and
 - (b) that ACE does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 20.9 ACE will destroy Personal Information upon the Customer’s request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 20.10 The Customer can make a privacy complaint by contacting ACE via e-mail. ACE will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

21. Unpaid Seller’s Rights

- 21.1 Where the Customer has left any item with ACE for repair, modification, exchange or for ACE to perform any other service in relation to the item and ACE has not received or been tendered the whole of any monies owing to it by the Customer, ACE shall have, until all monies owing to ACE are paid:
- (a) a lien on the item; and

- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 21.2 The lien of ACE shall continue despite the commencement of proceedings, or judgment for any monies owing to ACE having been obtained against the Customer.
- 22. Service of Notices**
- 22.1 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.
- 22.2 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.
- 23. Trusts**
- 23.1 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 ACE may have notice of the Trust, the Customer covenants with ACE 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 ACE (ACE 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.
- 24. Building Industry Fairness (Security of Payment) Act 2017**
- 24.1 At ACE's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building Industry Fairness (Security of Payment) Act 2017 may apply.
- 24.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building Industry Fairness (Security of Payment) Act 2017 of Queensland, except to the extent permitted by the Act where applicable.
- 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 Queensland and are subject to the jurisdiction of the courts in that state. These terms prevail over all terms and conditions of the Customer (even if they form part of the Customer's purchase order).
- 25.3 Subject to clause 15, ACE 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 ACE of these terms and conditions (alternatively ACE's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 25.4 ACE may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 25.5 The Customer cannot licence or assign without the written approval of ACE.
- 25.6 ACE 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 ACE's sub-contractors without the authority of ACE.
- 25.7 The Customer agrees that ACE 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 ACE to provide Goods to the Customer.
- 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, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to ACE.
- 25.9 Both parties warrant that they have the power to enter this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 25.10 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and Delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.