
PV Technologies Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 "PVT" means PV Technologies Pty Ltd ATF MJ & A Smith Family Trust T/A PV Technologies Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of PV Technologies Pty Ltd ATF MJ & A Smith Family Trust T/A PV Technologies Pty Ltd.
- 1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by PVT 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).
- 1.4 "Price" means the Price payable for the Goods as agreed between PVT and the Customer in accordance with clause 5 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.
- 2.2 These terms and conditions may only be amended with PVT's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and PVT.
- 2.3 These general terms and conditions are meant to be read in conjunction with the applicable terms and conditions for hire. If there are any inconsistencies between the relevant documentation, then the terms and conditions contained therein shall prevail.
- 2.4 Goods are supplied by PVT only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

3. Electronic Transactions Act 2000

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

- 4.1 The Customer shall give PVT 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 business practice). The Customer shall be liable for any loss incurred by PVT as a result of the Customer's failure to comply with this clause.

5. Price and Payment

- 5.1 At PVT's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by PVT to the Customer; or
 - (b) PVT'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 PVT 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, poor weather conditions, limitations to accessing the site and/or crawl spaces, hard rock or other obscured barriers below the surface or iron reinforcing rods in concrete or other latent soil conditions, existing state of electrical components or switchboard, non-compliant wiring, availability of machinery, safety considerations including the discovery of asbestos or synthetic mineral fibres, defects found or additional work required on closer inspection where an estimate has been given, prerequisite work by any third party not being completed or hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to PVT in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond PVT's control.
- 5.3 At PVT'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 PVT, which may be:
 - (a) by way of instalments/progress payments in accordance with PVT's payment schedule;
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by PVT.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two percent (2%) of the Price), or by any other method as agreed to between the Customer and PVT.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to PVT an amount equal to any GST PVT must pay for any supply by PVT 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.

6. Delivery

- 6.1 Subject to clause 6.2 it is PVT's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.2 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that PVT claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond PVT's control, including but not limited to any failure by the Customer to:
 - (a) make a selection; or
 - (b) have the site ready for the Services; or

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- (c) notify PVT that the site is ready.
- 6.3 At PVT's sole discretion the cost of delivery is in addition to the Price.
- 6.4 The Customer must take delivery by receipt or collection of the Goods whenever either is tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then PVT shall be entitled to charge a reasonable fee for redelivery of the Goods and/or the storage of the Goods.
- 6.5 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed five percent (5%); and
 - (b) the Price shall be adjusted pro rata to the discrepancy.
- 6.6 Any time or date given by PVT to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and PVT will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
- 7. Risk**
- 7.1 If PVT retains ownership of the Goods under clause 15 then:
- (a) where PVT is supplying Goods only, all risk for the Goods shall immediately pass to the Customer on delivery and the Customer must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that either:
 - (i) the Customer or the Customer's nominated carrier takes possession of the Goods at PVT's address; or
 - (ii) the Goods are delivered by PVT or PVT's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
 - (b) where PVT is to both supply and install Goods then PVT shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Customer.
- 7.2 Notwithstanding the provisions of clause 7.1 if the Customer specifically requests PVT to leave Goods outside PVT's premises for collection or to deliver the Goods to an unattended location then such Goods shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Customer's expense.
- 7.3 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Act, Regulations and Codes of Practice. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 7.4 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 connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing), PVT reasonably forms the opinion that the Customer's premises is not safe for the installation of Goods to proceed then PVT shall be entitled to delay installation of the Goods (**in accordance with the provisions of clause 6.2 above**) until PVT is satisfied that it is safe for the installation to proceed.
- 7.5 Where the Customer has supplied materials for PVT to complete the Services, the Customer acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. PVT shall not be responsible for any defects in the materials, any loss or damage to the Services (or any part thereof), howsoever arising from the use of materials supplied by the Customer.
- 7.6 The Customer acknowledges that PVT is only responsible for parts that are replaced by PVT, and in the event that other parts/Goods, subsequently fail, the Customer agrees to indemnify PVT against any loss or damage to the Services, or caused by the Goods, or any part thereof howsoever arising.
- 7.7 The Customer acknowledges and agree that where PVT has performed temporary repairs that:
- (a) PVT offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (b) PVT will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair necessary.
- 7.8 The Customer acknowledges that Goods supplied may:
- (a) fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.
- 7.9 PVT may at its discretion notify the Customer that it requires to store at the work site materials, fittings and appliances, or plant and tools required for the Services, in which event the Customer shall supply PVT a safe area for storage and shall take all reasonable efforts to protect all items so stored from possible destruction, theft or damage. In the event that any such items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Customer's responsibility.
- 8. Accuracy of Customer's Plans and Measurements**
- 8.1 PVT 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, PVT accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9. Customer's Responsibilities**
- 9.1 PVT is not responsible for the removal of rubbish from or clean-up of the building/constructions site/s. This is the responsibility of the Customer or the Customer's agent.
- 9.2 It is further agreed that the Customer will:
- (a) supply temporary lighting, toilet, eating and first aid facilities if required; and
 - (b) remove from the work area any furniture, personal effects or other property likely to impede PVT in order to minimise the risk of injury or any damage.

10. Access

10.1 The Customer shall ensure that PVT has clear and free access to the work site at all times to enable them to undertake the Services. PVT 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 PVT.

11. Underground Locations

11.1 Prior to PVT commencing any work the Customer must advise PVT 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 PVT will take all care to avoid damage to any underground services the Customer agrees to indemnify PVT 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 11.1.

12. Specifications

12.1 The Customer acknowledges that:

- (a) all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in PVT'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 PVT;
- (b) while PVT may have provided information or figures to the Customer regarding the performance of the Goods, the Customer acknowledges that PVT has given these in good faith, and are estimates based on industry prescribed estimates.

13. Surplus Goods

13.1 Unless otherwise stated elsewhere in this contract:

- (a) demolished materials remain the Customer's property; and
- (b) Goods which PVT brings to the site which are surplus remain the property of PVT.

14. Compliance with Laws

14.1 The Customer and PVT 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.

14.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.

14.3 The Customer agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

15. Title To Goods

15.1 PVT and the Customer agree that ownership of the Goods shall not pass until:

- (a) the Customer has paid PVT all amounts owing to PVT; and
- (b) the Customer has met all of its other obligations to PVT.

15.2 Receipt by PVT 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.

15.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Customer in accordance with clause 15.1 that the Customer is only a bailee of the Goods and must return the Goods to PVT on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for PVT and must pay to PVT 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 PVT and must pay or deliver the proceeds to PVT 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 PVT and must sell, dispose of or return the resulting product to PVT as it so directs.
- (e) the Customer irrevocably authorises PVT to enter any premises where PVT believes the Goods are kept and recover possession of the Goods.
- (f) PVT 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 PVT.
- (h) PVT may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

16. Personal Property Securities Act 2009 ("PPSA")

16.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

16.2 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 the Seller for Services – that have previously been supplied and that will be supplied in the future by the Seller to the Customer.

16.3 The Customer undertakes to:

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- (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 PVT 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 16.3(a)(i) or 16.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, PVT 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 PVT;
 - (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 PVT;
 - (e) immediately advise PVT of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 16.4 PVT 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.
- 16.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 16.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 16.7 Unless otherwise agreed to in writing by PVT, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 16.8 The Customer must unconditionally ratify any actions taken by PVT under clauses 16.3 to 16.5.
- 16.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 17. Security and Charge**
- 17.1 In consideration of PVT 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).
- 17.2 The Customer indemnifies PVT from and against all PVT's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising PVT's rights under this clause.
- 17.3 The Customer irrevocably appoints PVT and each director of PVT as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Customer's behalf.
- 18. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 18.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify PVT 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 PVT to inspect the Goods.
- 18.2 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**).
- 18.3 PVT acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 18.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, PVT makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. PVT's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 18.5 If the Customer is a consumer within the meaning of the CCA, PVT's liability is limited to the extent permitted by section 64A of Schedule 2.
- 18.6 If PVT is required to replace the Goods under this clause or the CCA, but is unable to do so, PVT may refund any money the Customer has paid for the Goods.
- 18.7 If the Customer is not a consumer within the meaning of the CCA, PVT'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 PVT at PVT's sole discretion;
 - (b) limited to any warranty to which PVT is entitled, if PVT did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 18.8 Subject to this clause 18, returns will only be accepted provided that:
 - (a) the Customer has complied with the provisions of clause 18.1; and
 - (b) PVT 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.
- 18.9 Notwithstanding clauses 18.1 to 18.8 but subject to the CCA, PVT 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 the 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 PVT;
 - (e) fair wear and tear, any accident, or act of God.
- 18.10 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 PVT as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly

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- excluded. The Customer acknowledges and agrees that PVT 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 18.10.
- 18.11 PVT may in its absolute discretion accept non-defective Goods for return in which case PVT may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 18.12 Notwithstanding anything contained in this clause if PVT is required by a law to accept a return then PVT will only accept a return on the conditions imposed by that law.

19. Intellectual Property

- 19.1 Where PVT has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of PVT.
- 19.2 The Customer warrants that all designs, specifications or instructions given to PVT will not cause PVT to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify PVT against any action taken by a third party against PVT in respect of any such infringement.
- 19.3 The Customer agrees that PVT may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which PVT has created for the Customer.

20. Default and Consequences of Default

- 20.1 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 PVT's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Customer owes PVT any money the Customer shall indemnify PVT from and against all costs and disbursements incurred by PVT in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, PVT's contract default fee, and bank dishonour fees).
- 20.3 Further to any other rights or remedies PVT may have under this contract, if a Customer has made payment to PVT by credit card, 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 PVT under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 20.4 Without prejudice to any other remedies PVT may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions PVT may suspend or terminate the supply of Goods to the Customer. PVT will not be liable to the Customer for any loss or damage the Customer suffers because PVT has exercised its rights under this clause.
- 20.5 Without prejudice to PVT's other remedies at law PVT shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to PVT shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to PVT becomes overdue, or in PVT's opinion the Customer will be unable to make a payment when it falls due;
 - (b) 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

21. Cancellation

- 21.1 PVT may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are due to be delivered by giving written notice to the Customer. On giving such notice PVT shall repay to the Customer any money paid by the Customer for the Goods. PVT shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.2 In the event that the Customer cancels delivery of the Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by PVT as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.3 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.

22. Privacy Act 1988

- 22.1 The Customer agrees for PVT to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by PVT.
- 22.2 The Customer agrees that PVT 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 years.
- 22.3 The Customer consents to PVT being given a consumer credit report to collect overdue payment on commercial credit.
- 22.4 The Customer agrees that personal credit information provided may be used and retained by PVT 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.
- 22.5 PVT 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.

- 22.6 The information given to the CRB may include:
- (a) personal information as outlined in 22.1 above;
 - (b) name of the credit provider and that PVT 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 PVT has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of PVT, 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).
- 22.7 The Customer shall have the right to request (by e-mail) from PVT:
- (a) a copy of the information about the Customer retained by PVT and the right to request that PVT correct any incorrect information; and
 - (b) that PVT does not disclose any personal information about the Customer for the purpose of direct marketing.
- 22.8 PVT 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 agreement or is required to be maintained and/or stored in accordance with the law.
- 22.9 The Customer can make a privacy complaint by contacting PVT via e-mail. PVT 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.

23. Unpaid Seller's Rights

- 23.1 Where the Customer has left any item with PVT for repair, modification, exchange or for PVT to perform any other service in relation to the item and PVT has not received or been tendered the whole of any monies owing to it by the Customer, PVT shall have, until all monies owing to PVT 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.
- 23.2 The lien of PVT shall continue despite the commencement of proceedings, or judgment for any monies owing to PVT having been obtained against the Customer.

24. Dispute Resolution

- 24.1 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.

25. Building and Construction Industry Security of Payments Act 2009

- 25.1 At PVT's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 2009 may apply.
- 25.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 2009 of South Australia, except to the extent permitted by the Act where applicable.

26. General

- 26.1 The failure by PVT to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect PVT'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.
- 26.2 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia in which PVT has its principal place of business, and are subject to the jurisdiction of the courts in South Australia.
- 26.3 Subject to clause 18, PVT 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 PVT of these terms and conditions (alternatively PVT's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 26.4 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 PVT nor to withhold payment of any invoice because part of that invoice is in dispute.
- 26.5 PVT may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 26.6 The Customer agrees that PVT may amend these terms and conditions at any time. If PVT makes a change to these terms and conditions, then that change will take effect from the date on which PVT notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for PVT to provide Goods to the Customer.
- 26.7 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.
- 26.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.