Character Group (WA) Pty Ltd – Terms & Conditions of Trade

1. Definitions

1.1 "**Acknowledgment Document"** means the document signed by the Client in conjunction with these Terms and Conditions of Trade and applicable if CG elects, whereby the Client acknowledges the extent and effect of the provision of security the Client provides to CG in consideration of the provision of Goods or Services.

1.2 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting CG to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
(a) if there is more than one Client, is a reference to each Client jointly and severally; and
(b) if the Client is a partnership, it shall bind each partner jointly and severally; and
(c) if the Client is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and

1.3 includes the Client's executors, administrators, successors, and permitted assigns.

1.4 **"CG"** means Character Group (WA) Pty Ltd T/A either Character Cabinets or Stone With Character its successors and assigns or any person acting on behalf of and with the authority of Character Group (WA) Pty Ltd.

1.5 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, Contracts, client information (including but not limited to, "**Personal Information**" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.

1.6 **"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.

1.7 **"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 Client does not wish to allow Cookies to operate in the background when using CG's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**

1.8 **"Goods"** means all Goods or Services supplied by CG to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).

1.9 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

1.10 **"Price"** means the Price payable (plus any GST where applicable) for the Goods as agreed between CG and the Client in accordance with clause 5 below.

2. Acceptance

2.1 The parties acknowledge and agree that:
(a) they have read and understood the terms and conditions contained in this Contract; and
(b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.

2.2 These terms and conditions may be meant to be read in conjunction with CG's Hire Form, and where the context so permits, the terms 'Goods' or 'Services' shall include any supply of Equipment, as defined therein. In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.

2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.

2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with CG and it has been approved with a credit limit established for the account. In the event that the supply of Goods requested exceeds the Client's credit limit and/or the account exceeds the payment terms, CG reserves the right to refuse delivery.

2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2011 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

3.1 The Client acknowledges and accepts that CG 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 CG 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 CG in respect of the Services.

3.2 In circumstances where the Client is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Client 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) ("**Client Error**"). The Client must pay for all Goods it orders from CG notwithstanding that such Goods suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take Delivery of such Goods. CG is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

4. Change in Control

4.1 The Client shall give CG not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by CG as a result of the Client's failure to comply with this clause.

5. Price and Payment

5.1 At CG's sole discretion, the Price shall be either:
(a) as indicated on any invoice provided by CG to the Client upon placement of an order for Goods; or

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(b) the Price as at the date of Delivery of the Goods according to CG's current price list, as previously disclosed to the Client upon the Client's placement of an order for Goods; or
(c) CG'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 CG reserves the right to change the Price if a variation to CG'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, availability of machinery, safety considerations, prerequisite work by any third party not being completed or as a result of any increase to CG in the cost of materials and labour) will be charged for on the basis of CG's quotation, and will be detailed in writing together with any changes to the date of completion, and shown as variations on CG's invoice. The Client shall be required to respond to any variation submitted by CG within ten (10) working days. Failure to do so will entitle CG 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.

5.3 At CG's sole discretion, a reasonable non-refundable deposit may be required upon placement of an order for Goods, in accordance with any quotation provided by CG or as notified to the Client prior to the placement of an order for Goods.

5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by CG, which may be:
(a) on delivery of the Goods;
(b) by way of instalments/progress payments in accordance with CG's payment schedule;
(c) for specific approved Clients, the end of the following month in which an invoice has been given to the Client by CG;
(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 Client by CG.

5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and CG.

5.6 CG may in its discretion allocate any payment received from the Client towards any invoice that CG determines and may do so at the time of receipt or at any time afterwards. On any default by the Client CG may re-allocate any payments previously received and allocated. In the absence of any payment allocation by CG, payment will be deemed to be allocated in such manner as preserves the maximum value of CG's Purchase Money Security Interest (as defined in the PPSA) in the Goods.

5.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by CG 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 Client must notify CG in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as CG investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in CG placing the Client's account into default and subject to default interest in accordance with clause 16.1.

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

6. Delivery of Goods

6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that CG (or CG's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.

6.2 The cost of Delivery will be payable by the Client in accordance with the quotation provided by CG to the Client, or as otherwise notified to the Client prior to the placement of an order for Goods.

6.3 CG 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.

6.4 The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery.

6.5 Any time specified by CG for Delivery of the Goods is an estimate only and CG will not be liable for any loss or damage incurred by the Client 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 CG is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then CG 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 Client on Delivery and the Client 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 Client, CG is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by CG is sufficient evidence of CG's rights to receive the insurance proceeds without the need for any person dealing with CG to make further enquiries.

7.3 Where CG is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and CG shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.

7.4 CG shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, CG accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

7.5 Granite, marble engineered stone, and glass have natural elements in the products that have naturally occurring variations in colour and shade tones, markings, and veining may vary from colour samples provided. CG gives no guarantee (expressed or implied) that colour samples will match the Goods supplied. CG will make every effort to match colour samples to the Goods supplied but will not be liable in any way whatsoever for colour samples differing from the Goods supplied.

7.6 Marble, granite and stainless steel are porous materials, therefore, all such materials supplied by CG are sealed for protection. However, oil and other acidic substances are prone to causing discolouration and staining if left on surfaces for some time. The Client agrees to indemnify CG against any damage occurring after delivery and installation.

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7.7 The Client acknowledges and accepts that Goods (including but not limited to paint, timber, tiles) supplied may:
(a) exhibit variations in shade tone, colour, texture, markings, veining, surface and finish, and may fade or change colour over time. CG will make every effort to match batches/samples of the Goods supplied in order to minimise such variations, but shall not be liable in any way whatsoever where such variations occur;
(b) expand, contract or distort as a result of exposure to heat, cold, weather;
(c) mark, stain or rust if exposed to certain substances; and
(d) be damaged or disfigured by impact or scratching.

7.8 Timber is a:
(a) natural product. Timber, laminate and engineered timber may exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst Character Cabinets will make every effort to match sales samples to the finished Goods Character Cabinets accepts no liability whatsoever where such samples differ to the finished Goods supplied; and
(b) hydroscopic material subject to expansion and contraction, therefore CG will accept no responsibility for gaps that may appear in the timber during prolonged dry periods.

8. Client's Responsibilities

8.1 It shall be the Client's responsibility to provide CG with free access and use of services (including, but not limited to, power, toilet facilities) to enable CG to provide and complete the Service.

8.2 Where CG notifies the Client that it intends to store onsite Goods, plant, equipment or tools to be used in performance of the Services, then the Client shall designate an area for storage and shall take all reasonable precautions to protect such items against destruction, damage, or theft. In the event that such items are destroyed, damaged or stolen then the cost of replacement shall be added to the Price and will be shown as a variation as per clause 5.2..

8.3 **Access**

8.4 The Client shall ensure that CG has clear and free access to the work site at all times to enable them to undertake the Services. CG 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 CG.

9. Underground Locations

9.1 Prior to CG commencing any work the Client must advise CG of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

9.2 Whilst CG will take all care to avoid damage to any underground services the Client agrees to indemnify CG 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 9.1.

10. Compliance with Laws

10.1 The Client and CG 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.

10.2 Where the Client has supplied products for CG to complete the Services, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the intended use and any faults inherent in those products. However, if in CG's opinion, it is believed that the materials supplied are non-conforming products and will not conform with state and/or territory regulations, then CG shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 5.2..

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

10.4 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

11. Title

11.1 CG and the Client agree that ownership of the Goods shall not pass until:
(a) the Client has paid CG all amounts owing to CG; and
(b) the Client has met all of its other obligations to CG.

11.2 Receipt by CG 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.

11.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 11.1:
(a) the Client is only a bailee of the Goods and must return the Goods to CG on request;
(b) the Client holds the benefit of the Client's insurance of the Goods on trust for CG and must pay to CG the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
(c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for CG and must pay or deliver the proceeds to CG on demand;
(d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of CG and must sell, dispose of or return the resulting product to CG as it so directs;
(e) the Client irrevocably authorises CG to enter any premises where CG believes the Goods are kept and recover possession of the Goods;
(f) CG may recover possession of any Goods in transit whether or not Delivery has occurred;
(g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of CG; and

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(h) CG may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

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

12.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by CG to the Client, and the proceeds from such Goods.

12.3 The Client undertakes to:

(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which CG 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 12.3(a)(i) or 12.3(a)(ii);

(b) indemnify, and upon demand reimburse, CG 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 CG;

(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 CG;

(e) immediately advise CG of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales.

12.4 CG and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

12.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

12.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

12.7 Unless otherwise agreed to in writing by CG, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

12.8 The Client must unconditionally ratify any actions taken by CG under clauses 12.3 to 12.5.

12.9 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge

13.1 In consideration of CG agreeing to supply the Goods and/or provide its Services and as acknowledged by CG in accordance with any Acknowledgment Document the Client grants CG a security interest by way of a floating charge (registerable by CG pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, including but not limited to those set out in any Acknowledgment Document, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Goods and/or Services under this Contract and/or permit CG to appoint a receiver to the Client in accordance with the *Corporations Act 2001* (Cth).

13.2 The Client indemnifies CG from and against all CG's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising CG's rights under this clause.

13.3 In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 11.1 ,12.2 and 13.1 as applicable, is deemed insufficient by CG to secure the repayment of monies owed by the Client to CG, the Client hereby grants CG a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money), in accordance with the Acknowledgement Document.

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

14.1 The Client must inspect the Goods on Delivery and must within seven (7) days of Delivery notify CG in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow CG to inspect the Goods.

14.2 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**).

14.3 CG acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, CG makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. CG's liability in respect of these warranties is limited to the fullest extent permitted by law.

14.5 If the Client is a consumer within the meaning of the CCA, CG's liability is limited to the extent permitted by section 64A of Schedule 2.

14.6 If CG is required to replace the Goods under this clause or the CCA, but is unable to do so, CG may refund any money the Client has paid for the Goods.

14.7 If the Client is not a consumer within the meaning of the CCA, CG's liability for any defect or damage in the Goods is:

(a) limited to the value of any express warranty or warranty card provided to the Client by CG at CG's sole discretion;

(b) limited to any warranty to which CG is entitled, if CG did not manufacture the Goods;

(c) otherwise negated absolutely.

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14.8 Subject to this clause 14, returns will only be accepted provided that:
(a) the Client has complied with the provisions of clause 14.1; and
(b) CG has agreed that the Goods are defective; and
(c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, CG shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
(a) the Client failing to properly maintain or store any Goods;
(b) the Client using the Goods for any purpose other than that for which they were designed;
(c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
(d) the Client failing to follow any instructions or guidelines provided by CG;
(e) fair wear and tear, any accident, or act of God.

14.10 In the case of second-hand Goods, unless the Client is a consumer under the CCA, the Client 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 CG as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that CG has agreed to provide the Client with the second-hand Goods and calculated the Price of the second- hand Goods in reliance of this clause 14.10.

14.11 CG may in its absolute discretion accept non-defective Goods for return in which case CG may require the Client to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.

14.12 Notwithstanding anything contained in this clause if CG is required by a law to accept a return, then CG will only accept a return on the conditions imposed by that law.

14.13 Subject to clause 14.1, customised, or non-stocklist items or Goods made or ordered to the Client's specifications are not acceptable for credit or return.

15. Intellectual Property

15.1 Where CG has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of CG. Under no circumstances may such designs, drawings and documents be used without the express written approval of CG.

15.2 The Client warrants that all designs, specifications, or instructions given to CG will not cause CG to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify CG against any action taken by a third party against CG in respect of any such infringement.

15.3 The Client agrees that CG may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which CG has created for the Client.

16. Default and Consequences of Default

16.1 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 CG's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

16.2 If the Client owes CG any money, the Client shall indemnify CG from and against all costs and disbursements:
(a) incurred; and/or
(b) which would be incurred and/or
(c) for which by the Client would be liable;
in regard to legal costs on a solicitor and own client basis incurred in exercising CG's rights under these terms and conditions, internal administration fees, CG'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.

16.3 Further to any other rights or remedies CG may have under this Contract, if a Client has made payment to CG, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by CG under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

16.4 Without prejudice to CG's other remedies at law CG shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to CG shall, whether or not due for payment, become immediately payable if:
(a) any money payable to CG becomes overdue, or in CG's opinion the Client will be unable to make a payment when it falls due;
(b) the Client has exceeded any applicable credit limit provided by CG;
(c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

17. Cancellation

17.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions **("the Breaching Party")** the other party may suspend or terminate the supply or purchase of Goods and/or Services to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.

17.2 If CG, due to reasons beyond CG's reasonable control, is unable to the deliver any Goods and/or Services to the Client, CG may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services

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are delivered by giving written notice to the Client. On giving such notice CG shall repay to the Client any money paid by the Client for the Goods and/or Services. CG shall not be liable for any loss or damage whatsoever arising from such cancellation.

17.3 The Client may cancel Delivery of the Goods and/or Services by written notice served within forty-eight (48) hours of placement of the order. If the Client cancels Delivery in accordance with this clause 17.3, the Client will not be liable for the payment of any costs of CG, except where a deposit is payable in accordance with clause 5.3. Failure by the Client to otherwise accept Delivery of the Goods and/or Services shall place the Client in breach of this Contract.

17.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

18. Privacy Policy

18.1 All emails, documents, images, or other recorded information held or used by CG is Personal Information, as defined and referred to in clause 18.3, and therefore considered Confidential Information. CG 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"). CG acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by CG that may result in serious harm to the Client, CG will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

18.2 Notwithstanding clause 18.1, privacy limitations will extend to CG in respect of Cookies where the Client utilises CG's website to make enquiries. CG agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:

(a) IP address, browser, email client type and other similar details;
(b) tracking website usage and traffic; and
(c) reports are available to CG when CG sends an email to the Client, so CG may collect and review that information ("collectively Personal Information")

If the Client consents to CG's use of Cookies on CG's website and later wishes to withdraw that consent, the Client may manage and control CG's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

18.3 The Client agrees that CG may exchange information about the Client with those credit providers and with related body corporates for the following purposes:

(a) to assess an application by the Client; and/or
(b) to notify other credit providers of a default by the Client; and/or
(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.

18.4 The Client consents to CG being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.

18.5 The Client agrees that personal credit information provided may be used and retained by CG for the following purposes (and for other agreed purposes or required by):

(a) the provision of Goods; and/or
(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
(d) enabling the collection of amounts outstanding in relation to the Goods.

18.6 CG may give information about the Client to a CRB for the following purposes:

(a) to obtain a consumer credit report;
(b) allow the CRB to create or maintain a credit information file about the Client including credit history.

18.7 The information given to the CRB may include:

(a) Personal Information as outlined in 18.3 above;
(b) name of the credit provider and that CG is a current credit provider to the Client;
(c) whether the credit provider is a licensee;
(d) type of consumer credit;
(e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
(f) advice of consumer credit defaults (provided CG 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 Client no longer has any overdue accounts and CG has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
(g) information that, in the opinion of CG, the Client has committed a serious credit infringement;
(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars ($150).

18.8 The Client shall have the right to request (by e-mail) from CG:

(a) a copy of the Personal Information about the Client retained by CG and the right to request that CG correct any incorrect Personal Information; and
(b) that CG does not disclose any Personal Information about the Client for the purpose of direct marketing.

18.9 CG will destroy Personal Information upon the Client'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.

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18.10 The Client can make a privacy complaint by contacting CG via e-mail. CG 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 Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

19. Building and Construction Industry (Security of Payment) Act 2021

19.1 At CG'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 Payment) Act 2021 may apply.

19.2 Nothing in this Contract is intended to have the effect of contracting out of any provisions of the Building and Construction Industry (Security of Payment) Act 2021 of Western Australia, except to the extent permitted by the Act where applicable.

20. Unpaid Seller's Rights

20.1 Where the Client has left any item with CG for repair, modification, exchange or for CG to perform any other service in relation to the item and CG has not received or been tendered the whole of any monies owing to it by the Client, CG shall have, until all monies owing to CG 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.

20.2 The lien of CG shall continue despite the commencement of proceedings, or judgment for any monies owing to CG having been obtained against the Client.

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 Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not CG may have notice of the Trust, the Client covenants with CG as follows:
(a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
(b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
(c) the Client will not during the term of the Contract without consent in writing of CG (CG will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
(i) the removal, replacement or retirement of the Client as trustee of the Trust;
(ii) any alteration to or variation of the terms of the Trust;
(iii) any advancement or distribution of capital of the Trust; or
(iv) any resettlement of the trust fund or trust property.

23. General

23.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.

23.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

23.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the Perth Courts in Western Australia. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).

23.4 CG may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.

23.5 The Client cannot licence or assign without the written approval of CG.

23.6 CG may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of CG's sub-contractors without the authority of CG.

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23.7 The Client agrees that CG may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for CG to provide Goods to the Client.

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, 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 Client to make a payment to CG, once the parties agree that the Force Majeure event has ceased.

23.9 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.

23.10 This Contract and any subsequent hire agreement between CG and the Client, shall constitute as the entire agreement between CG and the Client, and the Client hereby acknowledges that no reliance is placed on any representation made by CG that is not embodied in this Contract.

23.11 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.

23.12 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.

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