Creative Drain Solutions Pty Ltd – Terms & Conditions of Trade

1. Definitions

1.1 "Manufacturer" means Creative Drain Solutions Pty Ltd (as trustee for The Edward Family Trust No. 2) T/A Creative Drain Solutions Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Creative Drain Solutions Pty Ltd (as trustee for The Edward Family Trust No. 2) T/A Creative Drain Solutions 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 the Manufacturer 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 the Manufacturer and the Customer in accordance with clause 4 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 Goods, or accepts Delivery.

2.2 These terms and conditions may only be amended with the Manufacturer's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Manufacturer.

2.3 Dimensions and specifications contained or referred to in any agreement or in any publications maintained or issued by the Manufacturer are estimates only. Unless otherwise expressly agreed in writing by the Manufacturer, it is not a condition of any agreement that the Goods will correspond precisely with such dimensions and specifications, and customary or reasonable tolerances will be allowed.

2.4 Neither the Manufacturer, nor any of its employees or agents, warrant or guarantee the accuracy or completeness of any information provided to the Customer. The Customer undertakes that all matters relevant to the supply of the Goods hereunder are to the Customer's satisfaction, and in doing so, the Customer acknowledges that in deciding to purchase the Goods hereunder that:

(a) they have relied on their own skill, inspection and judgement;
(b) they have not relied on any statement made by the Manufacturer or its employees or agents;
(c) they assume the risk of mistake in relation to the information provided.

3. Change in Control

3.1 The Customer shall give the Manufacturer 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 the Manufacturer as a result of the Customer's failure to comply with this clause.

4. Price and Payment

4.1 At the Manufacturer's sole discretion the Price shall be either:

(a) as indicated on any invoice provided by the Manufacturer to the Customer; or
(b) the Manufacturer's quoted price (subject to clause 4.2) which is based upon rates and costs at the date of the quotation, and will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

4.2 The Manufacturer reserves the right to change the Price:

(a) if a variation to the Goods which are to be supplied (including any applicable plans or specifications) is requested; or
(b) 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, safety considerations, prerequisite work by any third party not being completed, inaccurate structural measurements provided by the Customer, change of design, iron reinforcing rods in concrete, or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Services; or
(c) in the event of increases to the Manufacturer in the costs of supply and/or production of the Goods (Including fluctuations in currency exchange rates), and/or Delivery, due to circumstances beyond the reasonable control of the Manufacturer.

4.3 At the Manufacturer's sole discretion, a non-refundable deposit may be required.

4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Manufacturer, which may be:

(a) on, or before, Delivery;
(b) by way of instalments/progress payments in accordance with the Manufacturer's payment schedule;
(c) the date specified on any invoice or other form as being the date for payment; or
(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Manufacturer.

4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to three percent (3%) of the Price), or by any other method as agreed to between the Customer and the Manufacturer.

4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Manufacturer an amount equal to any GST the Manufacturer must pay for any supply by the Manufacturer 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.

4.7 Receipt by the Manufacturer 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, and until then the Manufacturer's rights and ownership in respect of the Goods, and this agreement, shall continue.

5. Delivery

5.1 Delivery of the Goods ("**Delivery**") is taken to occur at the time that:

(a) the Customer or the Customer's nominated carrier takes possession of the Goods at the Manufacturer's premises; or
(b) the Manufacturer (or the Manufacturer's nominated carrier) delivers the Goods to the Customer's nominated site, even if the Customer is not present thereat.

5.2 At the Manufacturer's sole discretion, the cost of Delivery is either included in, or in addition to, the Price.

5.3 The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. In the event that the Customer is unable, fails or refuses (or makes any indication of their intention to fail or refuse) to take or accept Delivery as arranged, then the Goods shall be deemed to have been delivered when the Manufacturer was willing to deliver them, and the Manufacturer shall be entitled to charge a reasonable fee for redelivery and/or storage.

5.4 The Manufacturer 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.

5.5 Any time or date given by the Manufacturer to the Customer is an estimate only. The Customer must still accept Delivery even if late and the Manufacturer will not be liable for any loss or damage incurred by the Customer as a result of the Delivery being late.

6. Risk

6.1 Risk of damage to, or loss, or deterioration of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

6.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, the Manufacturer is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Manufacturer is sufficient evidence of the Manufacturer's rights to receive the insurance proceeds without the need for any person dealing with the Manufacturer to make further enquiries.

6.3 If the Customer requests the Manufacturer to leave Goods outside the Manufacturer'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.

6.4 The Customer acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish. The Manufacturer will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.

6.5 Where the Manufacturer is required to install the Goods, the Customer warrants that the structure of the premises or equipment in or upon which the Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and the Manufacturer shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.

6.6 The Manufacturer shall not be liable for any defect or damage resulting from incorrect or faulty installation, or where caused by outside agents. Where the Customer requests the Manufacturer to repair such damage then the Manufacturer reserves the right to charge the Customer for any costs incurred in rectifying such damage.

6.7 The Customer acknowledges that the Manufacturer is only responsible for parts that are replaced/supplied by the Manufacturer and does not at any stage accept any liability in respect of components supplied by any other third party that subsequently fail and are found to be the source of the failure, the Customer agrees to indemnify the Manufacturer against any loss or damage to the Goods, or caused thereby, or any part thereof howsoever arising.

6.8 Where the Customer has supplied materials for the Manufacturer to complete the Goods, the Customer acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those materials. The Manufacturer shall not be responsible for any defects in the Goods, any loss or damage howsoever arising from the use of materials supplied by the Customer.

6.9 Any advice, recommendation, information, assistance or service provided by the Manufacturer in relation to Goods provided is given in good faith, is based on the Manufacturer's own knowledge and experience and shall be accepted without liability on the part of the Manufacturer and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods.

7. Accuracy of Customer's Plans and Measurements

7.1 In the event the Customer gives information relating to the Goods (including plans, specifications, measurements, quantities and other information provided by the Customer):

(a) it is the Customer's responsibility to verify the accuracy of the information before the Customer or the Manufacturer places an order based on the information. The Manufacturer accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause;
(b) the Manufacturer shall be entitled to rely on the accuracy of such information. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Manufacturer accepts no responsibility for any loss, damages, or costs however resulting therefrom.
(c)

8. Title

The Manufacturer and the Customer agree that ownership of the Goods shall not pass until:

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

8.1

8.2 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 8.1:

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

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

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

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

9.3 The Customer undertakes to:

(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Manufacturer 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 9.3(a)(i) or 9.3(a)(ii);
(b) indemnify, and upon demand reimburse, the Manufacturer 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 registration made thereby;
(c) not register a financing change statement in respect of a security interest without the prior written consent of the Manufacturer;
(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 the Manufacturer;
(e) immediately advise the Manufacturer of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

9.4 The Manufacturer 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.

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

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

9.7 Unless otherwise agreed to in writing by the Manufacturer, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

9.8 The Customer must unconditionally ratify any actions taken by the Manufacturer under clauses 9.3 to 9.5.

9.9 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.

10. Security and Charge

10.1 In consideration of the Manufacturer agreeing to supply 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).

10.2 The Customer indemnifies the Manufacturer from and against all the Manufacturer's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Manufacturer's rights under this clause.

10.3 The Customer irrevocably appoints the Manufacturer and each director of the Manufacturer as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.

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

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

11.2 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**").

11.3 The Manufacturer acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

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

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

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

11.7 If the Customer is not a consumer within the meaning of the CCA, the Manufacturer'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 the Manufacturer at the Manufacturer's sole discretion;
(b) limited to any warranty to which the Manufacturer is entitled, if the Manufacturer did not manufacture the Goods;
(c) otherwise negated absolutely.

11.8 Subject to this clause 11, returns will only be accepted provided that:

(a) the Customer has complied with the provisions of clause 11.1; and
(b) the Manufacturer 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.

11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, the Manufacturer 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 the 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 the Manufacturer;
(e) fair wear and tear, any accident, or act of God.

11.10 The Manufacturer may in its absolute discretion accept non-defective Goods for return in which case the Manufacturer 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.

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

12. Intellectual Property and Confidentiality

12.1 Where the Manufacturer has designed, drawn or developed Goods (including custom samples and/or prototypes) for the Customer, including specifications, other technical information and documents ("**IP**"), then the copyright in the IP shall remain the property of the Manufacturer. The Manufacturer grants the Customer a non-exclusive and non-transferable licence for the use of the IP (solely in relation to the operation of the Customer's own business and this agreement), and:

(a) the licence to use the IP shall immediate be withdrawn if the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions. In which case, the IP (including copies) must be immediately returned to the Manufacturer by the Customer; and
(b) the Customer agrees that they shall not, without the Manufacturer's prior written consent, supply the IP (and any particulars thereof) to any third party.

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

12.3 The Customer agrees that the Manufacturer may (at no cost) use for the purposes of marketing or entry into any competition, any IP which the Manufacturer has created for the Customer, or digital media of the completed project.

12.4 Each party agrees to treat all information and ideas communicated to it (including any IP) by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.

13. Default and Consequences of Default

13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Manufacturer's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

13.2 If the Customer owes the Manufacturer any money the Customer shall indemnify the Manufacturer from and against all costs and disbursements incurred by the Manufacturer in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Manufacturer's contract default fee, and bank dishonour fees).

13.3 Further to any other rights or remedies the Manufacturer may have under this agreement, if the Customer has made payment to the Manufacturer 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 the Manufacturer under this clause 13 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.

13.4 Without prejudice to any other remedies the Manufacturer may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Manufacturer may suspend or terminate the supply of Goods to the Customer. The Manufacturer will not be liable to the Customer for any loss or damage the Customer suffers because the Manufacturer has exercised its rights under this clause.

13.5 Without prejudice to the Manufacturer's other remedies at law the Manufacturer shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Manufacturer shall, whether or not due for payment, become immediately payable if:

(a) any money payable to the Manufacturer becomes overdue, or in the Manufacturer'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.

14. Cancellation

14.1 The Manufacturer may cancel any contract to which these terms and conditions apply or cancel Delivery at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Manufacturer shall repay to the Customer any money paid by the Customer for the Goods. The Manufacturer shall not be liable for any loss or damage whatsoever arising from such cancellation.

14.2 In the event that the Customer cancels Delivery the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Manufacturer as a direct result of the cancellation (including, but not limited to, any loss of profits).

14.3 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.

15. Privacy Act 1988

15.1 The Customer agrees for the Manufacturer 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 the Manufacturer.

15.2 The Customer agrees that the Manufacturer 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.

15.3 The Customer consents to the Manufacturer being given a consumer credit report to collect overdue payment on commercial credit.

15.4 The Customer agrees that personal credit information provided may be used and retained by the Manufacturer 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.

15.5 The Manufacturer 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.

15.6 The information given to the CRB may include:

(a) personal information as outlined in 15.1 above;
(b) name of the credit provider and that the Manufacturer 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 the Manufacturer has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
(g) information that, in the opinion of the Manufacturer, 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).

15.7 The Customer shall have the right to request (by e-mail) from the Manufacturer:

(a) a copy of the information about the Customer retained by the Manufacturer and the right to request that the Manufacturer correct any incorrect information; and
(b) that the Manufacturer does not disclose any personal information about the Customer for the purpose of direct marketing.

15.8 The Manufacturer 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.

15.9 The Customer can make a privacy complaint by contacting the Manufacturer via e-mail. The Manufacturer 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.

16. Unpaid Seller's Rights

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

16.2 The lien of the Manufacturer shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Manufacturer having been obtained against the Customer.

17. General

17.1 The failure by the Manufacturer to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Manufacturer'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.

17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which the Manufacturer has its principal place of business, and are subject to the jurisdiction of the courts in that state.

17.3 Subject to clause 11, the Manufacturer shall be under no liability whatsoever to the Customer for any incidental, indirect, special and/or consequential loss, damage and/or expense (including loss of profit and any claims, demands or actions against the Customer by any third party) suffered by the Customer arising out of a breach by the Manufacturer of these terms and conditions, even if the Manufacturer should have known the possibility of such damages arising out of, or in relation to its performance or non-performance of this agreement. Alternatively, the Manufacturer's liability shall be limited to damages which under no circumstances shall exceed the Price).

17.4 The Customer shall not, without the prior written consent of the Manufacturer, be entitled to set off against, or deduct from the Price (by way or counterclaim or other legal or equitable claim), any sums owed or claimed to be owed to the Customer by the Manufacturer, nor to withhold payment of any invoice because part of that invoice is in dispute.

17.5 The Manufacturer may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

17.6 The Customer agrees that the Manufacturer may amend these terms and conditions at any time. If the Manufacturer makes a change to these terms and conditions, then that change will take effect from the date on which the Manufacturer notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Manufacturer to provide Goods to the Customer.

17.7 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.

17.8 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.

Please note that a larger print version of these terms and conditions is available from the Manufacturer on request.

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