

1. Definitions

- 1.1 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **“TRCO”** means The Refrigeration Co. Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of The Refrigeration Co. Pty Ltd.
- 1.3 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting TRCO to provide the Works 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 a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 **“Works”** means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by TRCO to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.5 **“Worksite”** means the address nominated by the Client to which the Materials are to be supplied by TRCO.
- 1.6 **“Intended Use”** means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with a building.
- 1.7 **“Non-Conforming Product”** means products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
- (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.8 **“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.
- 1.9 **“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 TRCO’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.**
- 1.10 **“Price”** means the Price payable (plus any GST where applicable) for the Works as agreed between TRCO and the Client in accordance with clause 6 below.
- 1.11 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Works on credit shall not take effect until the Client has completed a credit application with TRCO and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Works requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, TRCO reserves the right to refuse delivery.
- 2.6 Any advice, recommendation, information, assistance or service provided by TRCO in relation to Materials or Works supplied is given in good faith to the Client, or the Client’s agent and is based on TRCO’s own knowledge and experience and shall be accepted without liability on the part of TRCO. Where such advice or recommendations are not acted upon then TRCO shall require the Client or their agent to authorise commencement of the Works in writing. TRCO shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
- 2.7 In the event that TRCO is required to provide the Works urgently, that may require TRCO’s staff to work outside normal business hours (including, but not limited to, working through lunch breaks, weekends and/or Public Holidays) then TRCO reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between TRCO and the Client.
- 2.8 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. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to TRCO as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Works or Materials on the Client’s behalf and/or to request any variation to the Works on the Client’s behalf (such authority to continue until all requested Works have been completed or the Client otherwise notifies TRCO in writing that said person is no longer the Client’s duly authorised representative).
- 3.2 In the event that the Client’s duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client’s behalf then the Client must specifically and clearly advise TRCO in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to TRCO for all additional costs incurred by TRCO (including TRCO’s profit margin) in providing any Works or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that TRCO 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 TRCO 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 TRCO in respect of the Works.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of TRCO; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 4.3 In circumstances where the Client is required to place an order for Materials, 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 Materials (whether they are made to order Materials or not). ("**Client Error**"). The Client must pay for all Materials it orders from TRCO notwithstanding that such Materials suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take delivery of such Materials. TRCO is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Clients Errors.

5. Change in Control

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

6. Price and Payment

- 6.1 At TRCO's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by TRCO to the Client in respect of Works performed or Materials supplied; or
 - (b) TRCO's quoted Price (subject to clause 6.2) which shall be binding upon TRCO provided that the Client shall accept TRCO's quotation in writing within thirty (30) days.
- 6.2 TRCO reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans, specifications or maintenance) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite or crawl spaces, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, discovery of additional faults on inspection, obscured building defects, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, hidden pipes and wiring, etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to TRCO in the cost of labour or Materials which are beyond TRCO's control.
- 6.3 Variations will be charged for on the basis of TRCO's quotation, and will be detailed in writing, and shown as variations on TRCO's invoice. The Client shall be required to respond to any variation submitted by TRCO within ten (10) working days. Failure to do so will entitle TRCO 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.
- 6.4 At TRCO's sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by TRCO, which may be:
- (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with TRCO's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the Worksite but not yet installed; or
 - (c) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices.
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by TRCO.
- 6.6 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and TRCO.
- 6.7 TRCO may in its discretion allocate any payment received from the Client towards any invoice that TRCO determines and may do so at the time of receipt or at any time afterwards. On any default by the Client TRCO may re-allocate any payments previously received and allocated. In the absence of any payment allocation by TRCO, payment will be deemed to be allocated in such manner as preserves the maximum value of TRCO's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 6.8 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 TRCO 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 TRCO in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as TRCO investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in TRCO placing the Client's account into default and subject to default interest in accordance with clause 18.1.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to TRCO an amount equal to any GST TRCO must pay for any supply by TRCO under this or any other contract for the sale of the Materials. 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.

7. Provision of the Works

- 7.1 Subject to clause 7.2 it is TRCO's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that TRCO claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond TRCO's control, including but not limited to any failure by the Client to:

- (a) make a selection; or
- (b) have the Worksite ready for the Works; or
- (c) notify TRCO that the Worksite is ready.

- 7.3 At TRCO's sole discretion, the cost of delivery is included in the Price.
- 7.4 TRCO may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 Any time specified by TRCO for delivery of the Works is an estimate only and TRCO will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties.

8. Risk

- 8.1 If TRCO retains ownership of the Materials under clause 13 then:
- (a) where TRCO is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by TRCO or TRCO's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address); or
 - (b) where TRCO is to both supply and install Materials then TRCO shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests TRCO to leave Materials outside TRCO's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 8.3 The Client warrants that any existing plumbing, gas fitting and/or associated services in or upon the Worksite that is subject to the Materials and/or Works is in compliance with regulations. TRCO reserves the right to halt all Works (in accordance with the provisions of clause 7.2 above) if in their opinion the Worksite is unsafe and/or the current positioning of the unit is illegal due to not meeting the required clearances then the Client will be informed of this and will be given a revised quotation or estimate to install the new equipment in a safe and legal position. Should the Client not wish to proceed TRCO will charge a standard fee for the time spent on the Worksite based on TRCO's quotation.
- 8.4 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 Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 8.5 The Client acknowledges that TRCO is only responsible for parts that are replaced by TRCO, and in the event that other Materials, subsequently fail, the Client agrees to indemnify TRCO against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.
- 8.6 Where the Client is to supply TRCO with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. TRCO shall not be liable whatsoever for any errors in the Materials that are caused by incorrect or inaccurate data being supplied by the Client.

9. Installation

- 9.1 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials 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 Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) that TRCO, its employees or TRCO reasonably form the opinion that the Client's premises is not safe for the installation of Materials to proceed then TRCO shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 7.2 above) until TRCO is satisfied that it is safe for the installation to proceed. TRCO may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed but all such works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.
- 9.2 Whilst the final location of the condensing unit is at the discretion of the Client, a charge will apply as a variation as per clause 6.2, if the Client requests the unit to not be located adjacent to the external wall, due to the underground piping required.
- 9.3 The final location of the wall, window or floor unit must be determined on the Worksite by the Client.
- 9.4 TRCO shall upon installation ensure that all installed Materials meet current industry standards applicable to noise levels, however TRCO cannot guarantee that noise levels will remain constant post installation as the Materials may be impacted by many factors such as the weather, lack of maintenance, tampering etc.
- 9.5 In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Client shall be responsible for any and all costs involved.
- 9.6 The Client acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on the Worksite, against theft or damage.
- 9.7 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify TRCO immediately upon any proposed changes. The Client agrees to indemnify TRCO against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.2.

10. Access

- 10.1 The Client shall ensure that TRCO has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). TRCO shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of TRCO.

11. Underground Locations

- 11.1 Prior to TRCO commencing any work the Client must advise TRCO of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and 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 the Worksite.
- 11.2 Whilst TRCO will take all care to avoid damage to any underground services the Client agrees to indemnify TRCO 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. Compliance with Laws

- 12.1 The Client and TRCO shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any occupational health and safety laws (OHS) relating or any other relevant safety standards or legislation pertaining to the Works.
- 12.2 Both parties acknowledge and agree:
- (a) to comply with the National Construction Code of Australia (NCC) and the Home Building Contracts Act 1991, in respect of all workmanship and building products to be supplied during the course of the Works; and
 - (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 12.3 Where the Client has supplied products for TRCO to complete the Works, 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 TRCO's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with state and/or territory regulations, then TRCO shall be entitled, without prejudice, to halt the Works 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 6.2.
- 12.4 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.

13. Title

- 13.1 TRCO and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid TRCO all amounts owing to TRCO; and
 - (b) the Client has met all its other obligations to TRCO.
- 13.2 Receipt by TRCO of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 13.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 13.1:
- (a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to TRCO on request.
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for TRCO and must pay to TRCO the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
 - (c) the production of these terms and conditions by TRCO shall be sufficient evidence of TRCO's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with TRCO to make further enquiries;
 - (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for TRCO and must pay or deliver the proceeds to TRCO on demand;
 - (e) the Client should not convert or process the Materials 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 TRCO and must sell, dispose of or return the resulting product to TRCO as it so directs;
 - (f) unless the Materials have become fixtures the Client irrevocably authorises TRCO to enter any premises where TRCO believes the Materials are kept and recover possession of the Materials;
 - (g) TRCO may recover possession of any Materials in transit whether or not delivery has occurred;
 - (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of TRCO;
 - (i) TRCO may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

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

- 14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 14.2 Upon assenting to these terms and conditions in writing the 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 Materials and/or collateral (account) – being a monetary obligation of the Client to TRCO for Works – that have previously been supplied and that will be supplied in the future by TRCO to the Client.
- 14.3 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 TRCO may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 14.3(a)(i) or 14.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, TRCO 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 Materials charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of TRCO;

- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of TRCO;
- (e) immediately advise TRCO of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 14.4 TRCO 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.
- 14.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 14.7 Unless otherwise agreed to in writing by TRCO, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.8 The Client shall unconditionally ratify any actions taken by TRCO under clauses 14.3 to 14.5.
- 14.9 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 15. Security and Charge**
- 15.1 In consideration of TRCO agreeing to supply the Materials, the Client charges all of its rights, title and interest (whether joint or severally) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 15.2 The Client indemnifies TRCO from and against all TRCO's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising TRCO's rights under this clause.
- 15.3 The Client irrevocably appoints TRCO and each director of TRCO as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.
- 16. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")**
- 16.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify TRCO 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 Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow TRCO to inspect the Materials or to review the Works provided.
- 16.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 16.3 TRCO acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, TRCO makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. TRCO's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.5 If the Client is a consumer within the meaning of the CCA, TRCO's liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.6 If TRCO is required to replace any Materials under this clause or the CCA, but is unable to do so, TRCO may refund any money the Client has paid for the Materials.
- 16.7 If TRCO is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then TRCO may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.
- 16.8 If the Client is not a consumer within the meaning of the CCA, TRCO's liability for any defect or damage in the Materials is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by TRCO at TRCO's sole discretion;
 - (b) limited to any warranty to which TRCO is entitled, if TRCO did not manufacture the Materials;
 - (c) otherwise negated absolutely.
- 16.9 Subject to this clause 16, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 16.1; and
 - (b) TRCO has agreed that the Materials are defective; and
 - (c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 16.10 Notwithstanding clauses 16.1 to 16.9 but subject to the CCA, TRCO 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 Materials;
 - (b) the Client using the Materials for any purpose other than that for which they were designed;
 - (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Works by the Client or any third party without TRCO's prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by TRCO;
 - (f) fair wear and tear, any accident, or act of God.
- 16.11 In the case of second hand Material, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Materials prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by TRCO 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 TRCO has agreed to provide the Client with the second-hand Materials and calculated the Price of the second-hand Materials in reliance of this clause 16.11.

- 16.12 TRCO may in its absolute discretion accept non-defective Materials for return in which case TRCO may require the Client to pay handling fees of up to twenty-five percent (25%) of the value of the returned Materials plus any freight costs.
- 16.13 Notwithstanding anything contained in this clause if TRCO is required by a law to accept a return then TRCO will only accept a return on the conditions imposed by that law.
- 16.14 Subject to clause 16.1, customised, or non-stocklist items or Materials made or ordered to the Client's specifications are not acceptable for credit or return.

17. Intellectual Property

- 17.1 Where TRCO has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in TRCO, and shall only be used by the Client at TRCO's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of TRCO.
- 17.2 The Client warrants that all designs, specifications or instructions given to TRCO will not cause TRCO to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify TRCO against any action taken by a third party against TRCO in respect of any such infringement.
- 17.3 The Client agrees that TRCO may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which TRCO has created for the Client.

18. Default and Consequences of Default

- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at TRCO's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes TRCO any money, the Client shall indemnify TRCO from and against all costs and disbursements incurred by TRCO regarding legal costs on a solicitor and own client basis, internal administration fees, TRCO'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.
- 18.3 Further to any other rights or remedies TRCO may have under this Contract, if a Client has made payment to TRCO, 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 TRCO under this clause 18 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.
- 18.4 Without prejudice to TRCO's other remedies at law TRCO shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to TRCO shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to TRCO becomes overdue, or in TRCO'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 TRCO;
 - (c) the Client becomes insolvent or bankrupt, 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.

19. Cancellation

- 19.1 Without prejudice to any other remedies TRCO may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions TRCO may suspend or terminate the supply of Works to the Client. TRCO will not be liable to the Client for any loss or damage the Client suffers because TRCO has exercised its rights under this clause.
- 19.2 TRCO may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice TRCO shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to TRCO for Works already performed. TRCO shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by TRCO as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

20. Privacy Policy

- 20.1 All emails, documents, images or other recorded information held or used by TRCO is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. TRCO 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"). TRCO acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by TRCO that may result in serious harm to the Client, TRCO 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.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to TRCO in respect of Cookies where the Client utilises TRCO's website to make enquiries. TRCO 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 TRCO when TRCO sends an email to the Client, so TRCO may collect and review that information ("collectively Personal Information")

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- If the Client consents to TRCO's use of Cookies on TRCO's website and later wishes to withdraw that consent, the Client may manage and control TRCO's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 20.3 The Client agrees for TRCO to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by TRCO.
- 20.4 The Client agrees that TRCO 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.
- 20.5 The Client consents to TRCO being given a consumer credit report to collect overdue payment on commercial credit.
- 20.6 The Client agrees that personal credit information provided may be used and retained by TRCO for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; 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 Works.
- 20.7 TRCO 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.
- 20.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 20.3 above;
 - (b) name of the credit provider and that TRCO 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 TRCO 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 TRCO has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of TRCO, 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).
- 20.9 The Client shall have the right to request (by e-mail) from TRCO:
- (a) a copy of the Personal Information about the Client retained by TRCO and the right to request that TRCO correct any incorrect Personal Information; and
 - (b) that TRCO does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 20.10 TRCO will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 20.11 The Client can make a privacy complaint by contacting TRCO via e-mail. TRCO will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to decide as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

21. Service of Notices

- 21.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 21.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

22. Trusts

- 22.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not TRCO may have notice of the Trust, the Client covenants with TRCO as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or 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 without consent in writing of TRCO (TRCO 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 property.

23. Construction Contracts Act 2004

- 23.1 At TRCO's sole discretion, if there are any disputes or claims for unpaid Works and/or Materials then the provisions of the Construction Contracts Act 2004 may apply.
- 23.2 Nothing in this Contract is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act where applicable.

24. General

- 24.1 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.
- 24.2 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 the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.3 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 courts in Perth, Western Australia. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).
- 24.4 Subject to clause 16, TRCO shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by TRCO of these terms and conditions (alternatively TRCO's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 24.5 TRCO may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 24.6 The Client cannot licence or assign without the written approval of TRCO.
- 24.7 TRCO may elect to subcontract out any part of the Works 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 TRCO's sub-contractors without the authority of TRCO.
- 24.8 The Client agrees that TRCO 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 TRCO to provide Works to the Client.
- 24.9 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.
- 24.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 24.11 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.