
Terms & Conditions of Trade

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 **"Seller"** means Shamir OHS Pty Ltd (ABN: 67 605 388 029) or Shamir Australia Pty Ltd (ABN: 67 006 180 776), its successors and assigns or any person acting on behalf of and with the authority of Shamir OHS Pty Ltd (ABN: 67 605 388 029) or Shamir Australia Pty Ltd (ABN: 67 006 180 776).
- 1.3 **"Customer"** means the person/s, entities (including any firm, corporation, government, semi-government or local government department) or authority or any person acting on behalf of and with the authority of the Customer requesting the Seller to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 **"Goods"** means all Goods or Services supplied by the Seller 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).
- 1.5 **"Indemnify"** means the Customer will fully and completely Indemnify the Seller from and against liability in the respect of all claims, demands, action, suits, proceeds and costs.
- 1.6 **"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.
- 1.7 **"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 Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.8 **"Price"** means the Price payable (plus any GST where applicable) for the Goods as agreed between the Seller and the Customer in accordance with clause 6 below.
- 1.9 **"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 Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges and accepts that:
- (a) the supply of Goods on credit shall not take effect until the Customer has completed a credit application with the Seller and it has been approved with a credit limit established for the account; and
 - (b) in the event that the supply of Goods request exceeds the Customers credit limit and/or the account exceeds the payment terms, the Seller reserves the right to refuse Delivery; and
 - (c) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Seller reserves the right to vary the Price with alternative Goods as per clause 6.2, subject to prior confirmation and agreement of both parties. The Seller also reserves the right to halt all Services until such time as the Seller and the Buyer agree to such changes. The Seller shall not be liable to the Buyer for any loss or damage the Buyer suffers due to the Seller exercising its rights under this clause.
- 2.5 During the period of the contract, the Customer shall observe, comply and Indemnify the Seller for loss, damage death or injury arising from any failure so to observe and comply with all Acts, Ordinances, Regulations, By Laws and Proclamations and the requirements of any statutory, local or other authority, and all rules and requirements of the owner of any property in, on or about or by way of sale to third party by which the Goods are used in relation to.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.7 In the event that the Goods provided by the Seller are subject to an insurance claim that the Customer has made, then the Customer agrees to honour their obligation for payment for such transactions invoiced by the Seller and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful or not; and further, will honour payment of any portion of the invoice that may be declined by the insurance company.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Customer agrees that should the Customer introduce any third party to the Seller as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Goods or Services on the Customer's behalf and/or to request any variation to the Services on the Customer's behalf (such authority to continue until all requested Services have been completed or the Customer otherwise notifies the Seller in writing that said person is no longer the Customer's duly authorised representative).
- 3.2 In the event that the Customer's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise the Seller in writing of the parameters of the limited authority granted to their representative.

Terms & Conditions of Trade

- 3.3 The Customer specifically acknowledges and accepts that they will be solely liable to the Seller for all additional costs incurred by the Seller (including the Seller's profit margin) in providing any Services, Goods, or variation/s requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).
- 4. Errors and Omissions**
- 4.1 The Customer acknowledges and accepts that the Seller 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 the Seller 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 the Seller in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of the Seller; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 5. Change in Control**
- 5.1 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause.
- 6. Price and Payment**
- 6.1 At the Seller's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by the Seller to the Customer; or
 - (b) the Seller's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 The Seller reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) if during the course of the Services, the Goods are not or cease to be available from the Seller's third party suppliers, then the Seller reserves the right to provide alternative Goods; or
 - (d) in the event of increases to the Seller in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight, levies, taxes, or insurance and/or toll charges), which are beyond the Seller's control.
- 6.3 Variations will be charged for on the basis of the Seller's quotation, and will be detailed in writing, and shown as variations on the Seller's invoice. The Customer shall be required to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller 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 the Seller's sole discretion, a deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Seller, which may be:
- (a) before Delivery of the Goods;
 - (b) thirty (30) days following the date specified on any invoice or other form as being the date for payment; or
 - (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 Seller.
- 6.6 If any part of an invoice is in dispute then the Customer shall notify the Seller in writing within three (3) business days once in receipt of the invoice, then the Customer may only withhold payment for that part of the invoice that is in dispute and shall pay the balance of the invoice when due.
- 6.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Seller.
- 6.8 The Seller may in its discretion allocate any payment received from the Customer towards any invoice that the Seller determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Seller may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Seller, payment will be deemed to be allocated in such manner as preserves the maximum value of the Seller's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.9 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller 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.
- 7. Delivery of Goods**
- 7.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that the Seller (or the Seller's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.2 Delivery and/or collection charges (including, but not limited to, toll charges, permits and/or licence fees, etc.) may apply, and shall be quoted upon request from the Customer.
- 7.3 Any time specified by the Seller for Delivery of the Goods is an estimate only. The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. The Seller will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. In the event that the Customer is unable to take Delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.

Terms & Conditions of Trade

- 7.4 The Seller 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.
- 7.5 Any time specified by the Seller for Delivery of the Goods is an estimate only and the Seller will not be liable for any loss or damage incurred
- 7.6 Where Goods ordered are safety certified frames, the Seller will not be responsible for any delay in delivery or for any non-delivery of the Goods, unless due to the fault of the Seller. In the event of delays or non-delivery of the Goods, the Seller reserves the right to charge the for any re-delivery of such Goods.

8. Risk

- 8.1 Risk of damage to or loss of the Goods passes to the Customer immediately once Goods leave the Seller's premises irrespective of whose transport is used for delivery. In the case of Safety Certified Frames, the risk of damage or loss passes to the Customer on the date and time the Safety Frames are ordered as such it is the Customer's responsibility to insure the Goods for any period that the Goods are in transit.
- 8.2 If any of the Goods are damaged or destroyed following or during Delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 8.3 If the Customer requests the Seller to leave Goods outside the Seller'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.
- 8.4 The Customer acknowledges that:
- (a) the following are processed or performed by the Seller at the Customer's sole risk:
 - (i) the Customer's own frames; or
 - (ii) tinting of the Customer's own lenses.
 - (b) the Seller will not accept responsibility for matching single lens tints when lenses are being Glacier or Glacier Plus Multi-Coated.

9. Title

- 9.1 The Seller and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Seller all amounts owing to the Seller; and
 - (b) the Customer has met all of its other obligations to the Seller.
- 9.2 Receipt by the Seller 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.
- 9.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 9.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to the Seller on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Seller and must pay to the Seller 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 Seller and must pay or deliver the proceeds to the Seller 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 Seller and must sell, dispose of or return the resulting product to the Seller as it so directs;
 - (e) the Customer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods;
 - (f) the Seller 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 Seller;
 - (h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

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

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to the Seller for Services – that have previously been supplied and that will be supplied in the future by the Seller to the Customer.
- 10.3 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 Seller 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 10.3(a)(i) or 10.3(a)(ii);
 - (b) Indemnify, and upon demand reimburse, the Seller 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 the Seller;
 - (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 Seller;

Terms & Conditions of Trade

- (e) immediately advise the Seller 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.
- 10.4 The Seller 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.
- 10.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by the Seller, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Customer must unconditionally ratify any actions taken by the Seller under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary (including those contained in this clause 10), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 11. Security and Charge**
- 11.1 In consideration of the Seller agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Customer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
- 11.3 The Customer irrevocably appoints the Seller and each director of the Seller as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.
- 12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 12.1 The Customer must inspect the Goods on Delivery and must within seven (7) days of Delivery notify the Seller 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 Seller to inspect the Goods.
- 12.2 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**).
- 12.3 The Seller acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Seller makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Customer is a consumer within the meaning of the CCA, the Seller's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 Defective Goods will be replaced with an alternative product and a credit note will be issued on the lower priced invoiced lenses. All replacement products will be invoiced at the Customer's current pricing structure and credit will only be issued in accordance with clause 13.
- 12.7 If the Seller is required to replace the Goods under this clause or the CCA, but is unable to do so, the Seller may refund any money the Customer has paid for the Goods.
- 12.8 If the Customer is not a consumer within the meaning of the CCA, the Seller'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 Seller at the Seller's sole discretion;
 - (b) limited to any warranty to which the Seller is entitled, if the Seller did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 12.9 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 12.1; and
 - (b) the Seller 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.
- 12.10 Notwithstanding clauses 12.1 to 12.9 but subject to the CCA, the Seller shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by the Seller;
 - (e) faulty frames (including, but not limited to, dry solder, screws that are unable to be removed, damaged coating prior to handling by the Seller's laboratory, etc.), which will be subject to the warranty of the manufacturer. Any frame damaged by the Seller will be replaced on the supply of a compliant tax invoice from the Customer and copy of the original frame invoice to the Seller's credit department; and
 - (f) mistreatment, abuse, fair wear and tear, any accident, or act of God. No warranty will be provided for Goods that are mistreated or abused.
- 12.11 Notwithstanding anything contained in this clause if the Seller is required by a law to accept a return then the Seller will only accept a return on the conditions imposed by that law.
- 12.12 The Seller will issue a full credit for uncut stock lenses that are returned in original packaging and in a saleable condition provided the claim for credit is received in accordance with clause 12.9.
- 12.13 Subject to clause 12.1, customised, or non-stocklist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.

Terms & Conditions of Trade

13. Credit Requests

- 13.1 Subject to clause 12 and the Seller's Warranties and Policies, any claim for credit (including those for defective Goods, or Goods under warranty) are subject to inspection by the Seller's quality control department and will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 12; and
 - (b) the Goods are returned within fourteen (14) days at the Customer's cost, accompanied by the appropriate Credit Request Form and original order (or copy) detailing invoice number, customer reference, type of lens and an explanation of the reason for return; and
 - (c) the Seller has agreed in writing that it accepts the Customer's claim; and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible under the circumstances.
- 13.2 Credit will be issued within thirty (30) days following the Seller's acceptance of the Customer's claim.

14. Intellectual Property

- 14.1 Where the Seller has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Seller. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Seller.
- 14.2 The Customer warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to Indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 14.3 The Customer agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Customer.

15. Default and Consequences of Default

- 15.1 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 Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Customer owes the Seller any money the Customer shall Indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's contract default fee, and bank dishonour fees).
- 15.3 Further to any other rights or remedies the Seller may have under this Contract, if a Customer has made payment to the Seller, 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 Seller under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 15.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by the Seller;
 - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

16. Cancellation

- 16.1 Without prejudice to any other remedies the Seller 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 Seller may suspend or terminate the supply of Goods to the Customer. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.
- 16.2 The Seller may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Seller shall repay to the Customer any money paid by the Customer for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.3 In the event that the Customer cancels the contract, or Delivery:
- (a) any deposit paid by the Customer to the Seller shall be forfeited by the Customer to the Seller; and
 - (b) after the start of the surfacing process, the Customer shall be liable for the full cost of the Goods already incurred by the Seller, and any (and all) loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits). 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.

17. Privacy Policy

- 17.1 All emails, documents, images or other recorded information held or used by the Seller is Personal Information, as defined and referred to in clause 17.3, and therefore considered Confidential Information. The Seller 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"). The Seller acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by the Seller that may result in serious harm to the Customer, the Seller will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.

Terms & Conditions of Trade

- 17.2 Notwithstanding clause 17.1, privacy limitations will extend to the Seller in respect of Cookies where transactions for purchases/orders transpire directly from the Seller's website. The Seller agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Seller when the Seller sends an email to the Customer, so the Seller may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the Seller's website.
- 17.3 The Customer agrees for the Seller 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 Customer in relation to credit provided by the Seller.
- 17.4 The Customer agrees that the Seller 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.
- 17.5 The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit.
- 17.6 The Customer agrees that personal credit information provided may be used and retained by the Seller 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.
- 17.7 The Seller 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.
- 17.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 17.3 above;
 - (b) name of the credit provider and that the Seller 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 Seller 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 Seller, 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).
- 17.9 The Customer shall have the right to request (by e-mail) from the Seller:
- (a) a copy of the Personal Information about the Customer retained by the Seller and the right to request that the Seller correct any incorrect Personal Information; and
 - (b) that the Seller does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 17.10 The Seller 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 Contract or is required to be maintained and/or stored in accordance with the law.
- 17.11 The Customer can make a privacy complaint by contacting the Seller via e-mail. The Seller 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.
- 18. Service of Notices**
- 18.1 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.
- 18.2 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.

Terms & Conditions of Trade

19. Trusts

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

20. General

- 20.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which the Seller has its principal place of business, and are subject to the jurisdiction of the Wynnum Courts in that state.
- 20.3 Subject to clause 12, the Seller shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 20.4 The Seller may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 20.5 The Customer cannot licence or assign without the written approval of the Seller.
- 20.6 The Seller may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Seller's sub-contractors without the authority of the Seller.
- 20.7 The Customer agrees that the Seller may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Seller to provide Goods to the Customer.
- 20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 20.9 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.