

Scratchless Glass Australia – Terms & Conditions of Trade

Definitions

- 1.1 "Scratchless Glass Australia" means S&F Hodgson Investments Pty Ltd as Trustee for the Hodgson Family Trust /IA Scratchless Glass Australia, its successors and assigns or any person acting on behalf of and with the authority of S&F Hodgson Investments Pty Ltd as Trustee for the Hodgson Family Trust /IA Scratchless Glass Australia "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting the Services. The Services are 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 part of a Trust, shall be bound in their capacity as a trustee; and
- (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.2 "Services" means Services (including consultation, manufacturing and/or installation services) or Goods supplied by the Seller to the Client at the Client's request from time to time (where the context so permits the terms "Services" or "Goods" shall be interchangeable for the other).
- 1.3 "Price" means the Price payable (plus any GST where applicable) for the Services as agreed between the Seller and the Client in accordance with clause 5 below.
- 1.4 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" Ch.
- 2.1 **Acceptance**
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 Services.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and the Seller.
- 2.3 Any advice, recommendation, information, assistance or service provided by the Seller in relation to Goods or Services supplied is given in good faith, is based on the Seller's own knowledge and experience and shall be accepted without liability on the part of the Seller and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.
- 2.4 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.
- 3.1 **Errors and Omissions**
The Client 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 information (hard copy and/or electronic) supplied by the Seller in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Seller, the Client shall not be entitled to treat this contract as repudiated nor render it invalid.
- 4.1 **Change in Control**
The Client shall give the Seller 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 numbers, change of trustees or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client's failure to comply with this clause.
- 5.1 **Price and Payment**
At the Seller's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Seller to the Client in respect of Services performed or Goods supplied; or
- (b) the Seller's quoted Price (subject to clause 5.2) which shall be binding upon the Client provided the Client has accepted the Seller's quotation in writing within thirty (30) days.
- 5.2 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) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, installations, site assessment, site preparation, weather, obstructions, defects which require remedial work, health hazards and safety considerations (such as the discovery of asbestos or other toxic substances), prerequisite work by any third party not being completed or additional surface preparation, etc.) which are only discovered on commencement of the Services; or
- (d) in the event of increases to the Seller in the cost of labour or materials which are beyond the Seller's control.
- 5.3 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 Client shall be required to respond to any variation submitted by the Seller within 7 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.
- 5.4 At the Seller's sole discretion a non-refundable deposit of up to twenty percent (20%) may be required prior to provision of Services.
- 5.5 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date determined by the Seller, which may be:
- (a) on completion of the Services; or
- (b) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
- (c) the date which is either seven (7), fourteen (14) or thirty (30) days following the date of any invoice given to the Client by the Seller;
- (d) the date specified on any invoice or other form as being the date for payment;
- (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 the Seller.
- 5.6 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Seller.
- 5.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Client 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 contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6.1 **Delivery of the Services**
Subject to clause 6.2 it is the Seller's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.2 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Seller claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Seller's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
- (b) have the site ready for the Services; or
- (c) notify the Seller that the site is ready.
- 6.3 At the Seller's sole discretion, the cost of delivery is included in the Price.
- 6.4 Any time specified by the Seller for delivery of the Services is an estimate only and the Seller 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 the Seller will not be liable to extend to the Client Services to be supplied at the time and place as was arranged between both parties. In the event that the Seller is unable to supply the Services as agreed solely due to any action or inaction of the Client, then the Seller shall not be liable for any loss or damage or re-supplying the Services at a later date and/or for storage of the Goods.
- 7.1 **Risk**
If the Seller retains ownership of the Goods under clause 10 then:
- (a) where the Seller is supplying Goods only, all risk for the Goods shall immediately pass to the Client on delivery and the Client must insure the Goods or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that either:

- (i) the Client or the Client's nominated carrier takes possession of the Goods at the Seller's address; or
- (ii) the Goods are delivered by the Seller or the Seller's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address);
- (b) where the Seller is to both supply and install Goods then the Seller shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Client.
- 7.2 Notwithstanding the provisions of clause 7.1 if the Client specifically requests the Seller to leave Goods outside the Seller's premises for storage or delivery of the Goods to the Client, then the Seller shall remain liable for loss or damage to the Goods and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Client's expense.
- 7.3 The Client warrants that the existing surface upon which Goods are to be applied, is sound and of suitable condition, and will sustain the application thereof, and the Seller shall not be liable for any claims, demands, losses, damages, costs and expenses however caused or arising caused by the failure or poor integrity of the surface upon which the Goods are applied. Any additional work required to repair surfaces to ensure the performance of the Goods shall be charged additional to the Price.
- 7.4 The Seller shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is incorrect, the Seller accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 7.5 Where the Seller gives advice or recommendations to the Client, or the Client agrees to indemnify the Seller against such advice and such advice or recommendations are not acted upon, or where the Client's instructions to the Seller compromises the purpose of the Services, then the Seller shall not be liable in any way whatsoever for any loss, damages, or costs that occur after any subsequent commencement of the Services.
- 7.6 The Client acknowledges and accepts that:
- (a) the Seller is only responsible for parts that are replaced by the Seller and that in the event that other parts/goods, subsequently to the Client's agreement to indemnify the Seller against any loss or damage to the goods, or caused by the goods, or any part thereof however arising; and
- (b) whilst the Seller will make every effort to match sales samples to the finished Goods, the Seller does not accept liability for any loss or damage to the goods, or caused by the goods, or any part thereof however arising; and
- (c) variations of colour and texture may be inherent in the Goods. The Seller shall not be liable for any loss, damages or costs however arising from the Client's acceptance of the goods, or any loss or damage to the goods, or any part thereof however arising; and
- (d) Goods supplied may expand, contract, mark or stain if exposed to certain substances which may be damaged or disfigured by impact or scratching; and
- (e) whilst every care shall be taken by the Seller, any damage to the surrounding area or breakage to the Client's existing glass, damage to existing paintwork during the Services by the Seller shall be at the Client's own risk.
- 8.1 **Access and Outside Agents**
The Client shall ensure that the Seller has clear and free access to the site at all times to enable them to provide the Services. The Seller shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas), unless due to the negligence of the Seller. The Client shall not be responsible for any damage caused by outside agents. Where the Client requests the Seller to repair such damage, then the Seller reserves the right to charge the Client for any costs incurred in rectifying such damage.
- 8.2 **Compliance with Laws**
The Client and the Seller shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to any work including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 8.3 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required.
- 8.4 **Title**
The Seller and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid the Seller all amounts owing to the Seller; and
- (b) the Client has met all of its other obligations to the Seller.
- 8.5 Notwithstanding the above, if the Client or the Seller or each shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 8.6 It is further agreed that until ownership of the Goods passes to the Client, the Seller shall retain the right to:
- (a) the Client is only a bailee of the Goods and unless the Goods have become fixtures must return the Goods to the Seller on request;
- (b) the Client holds the benefit of the Client'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 production of these terms and conditions by the Seller shall be sufficient evidence of the Seller's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Seller to make further enquiries;
- (d) the Client must not sell, dispose, or otherwise part with possession of the Goods or any part thereof, or any part of the business and for market value; if the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds of any such act to the Seller; and
- (e) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as if so directed;
- (f) unless the Goods have become fixtures the Client irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Client's Goods;
- (g) the Seller may recover possession of any Goods in transit whether or not delivery has occurred;
- (h) the Client shall not charge or grant an encumbrance over the Goods nor create any other lien or any interest in the Goods while they remain the property of the Seller;
- (i) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 8.7 **Personal Property Securities Act 2009 ("PPSA")**
In this clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 8.8 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to the Seller for Services – that have previously been supplied and that will be supplied in the future by the Seller to the Client.
- 8.9 (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;
- (b) register a financing statement or financing charge statement in relation to a security interest on the Personal Property Securities Register;
- (c) register any other document required to be registered by the PPSA; or
- (d) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii);
- (e) indemnify, and upon demand reimburse, the Seller for all expenses incurred in establishing a financing statement or financing charge statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (f) not register a financing charge statement in respect of a security interest without the prior written consent of the Seller; or
- (g) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Seller;
- (h) 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;
- 8.10 The Seller 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.

- 11.5 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.
- 11.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by the Seller, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Client shall unconditionally ratify any actions taken by the Seller under clauses 11.3 to 11.5.
- 11.9 Subject to any express provisions to the contrary (including those contained in this clause 11) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 12.1 **Security and Charge**
The Client shall agree to the Seller agreeing to supply the Goods, the Client 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 Client either now or in the future, 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).
- 12.2 The Client 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.
- 12.3 The Client irrevocably appoints the Seller and each director of the Seller as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.
- 13.1 **Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
The Client must inspect all Goods on delivery (or the Services on completion) and must within forty-eight (48) hours of delivery notify the Seller in writing of any evident defect/damage, shortage in quantity or failure to comply with the description or quality of the Client must notify any other defect in the Goods/Services as soon as reasonably possible after such defect becomes evident. Upon such notification the Client must allow the Seller to inspect the Goods or to review the Services provided by the Seller.
- 13.2 The Client's liability is limited to the Seller's liability under the Consumer Guarantees Act 2003 (CGA), 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 (the "Non-Excluded Guarantees").
- 13.3 The Seller acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees. Except as expressly set out in these terms and conditions or in relevant legislation, the Seller does not make any warranties or representations other than those set out in these terms and conditions including but not limited to the quality or suitability of the Goods/Services. The Seller's liability in respect of these warranties is limited to the Seller's liability under the CCA.
- 13.4 If the Client 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.
- 13.5 If the Seller is required to replace any Goods under this clause or the CCA, but is unable to do so, the Seller may refund any money the Client has paid for the Goods.
- 13.6 If the Seller is required to rectify, re-supply, or pay the cost of replacing the Services under this clause or the CCA, but is unable to do so, then the Seller may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services and Goods which have been provided to the Client which were not defective.
- 13.7 The Client's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by the Seller at the Seller's sole discretion; and
- (b) limited to any warranty that the Seller is entitled to, if the Seller did not manufacture the Goods;
- (c) otherwise negated absolutely.
- 13.8 Subject to this clause 13, returns will only be accepted provided that:
- (a) the Client is not a consumer within the meaning of the CCA; and
- (b) the Seller has agreed that the Goods are defective; and
- (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 13.9 Notwithstanding clauses 13.1 to 13.9 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 Client failing to comply with any of the Seller's instructions; or
- (b) the Client using the Goods for any purpose other than that for which they were designed;
- (c) the Client continuing to use any Goods after any defect became apparent to a reasonably prudent operator or user;
- (d) interference with the Services by the Client or any third party without the Seller's prior approval;
- (e) the Client failing to follow any instructions or guidelines provided by the Seller;
- (f) fair wear and tear, any accident, or act of God.
- 13.10 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.
- 14.1 **Intellectual Property**
The Client agrees that the Seller may (at no cost) use the Client's name, design, or any other information, trade names, documents, designs, drawings, plans or products which the Seller has created for the Client.
- 14.2 **Default and Consequences of Default**
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.
- 14.3 If the Client owes the Seller any money the Client 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 and costs on a solicitor and own client basis, the Seller's contract default fee, and bank dishonour fees). Further to any other rights or remedies the Seller may have under this contract, if a Client has made payment to the Seller, 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 the Seller under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention of the law.
- 14.4 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 Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for immediate payment, be payable to the Seller:
- (a) any money payable to the Seller becomes overdue; or in the Seller'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 the Seller;
- (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.
- 14.5 **Cancellation**
Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those contained in these terms and conditions) the Seller may suspend or terminate the supply of Services to the Client. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.
- 14.6 The Seller may cancel any order for Services under these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Seller for Services already performed. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation. In the event that the Client cancels the delivery of Services the Client shall be liable for any and all loss incurred (whether direct or indirect) as a result of the direct result of the cancellation (including, but not limited to, any loss of profits).
- 14.7 **Dispute Resolution**
If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall attempt to resolve the dispute. If the dispute is not resolved, each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further

- notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be conducted by a single arbitrator to be nominated by the President of the Australian Arbitration Association in Australia and/or referred to in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 18.1 **Privacy Act 1988**
The Client 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, previous credit applications, credit history) about the Client in relation to credit provided by the Seller.
- 18.2 The Client agrees that the Seller may exchange information about the Client with those credit providers and with related body corporate for the purposes of:
- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 18.3 The Client consents to the Seller being given a consumer credit report to collect and use for non-mortgage commercial credit.
- 18.4 The Client 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 Services to the Client; and/or
- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; 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 Services.
- 18.5 The Seller may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 18.6 The information given to the CRB may include:
- (a) personal information about the Client retained by the Seller;
- (b) name of the credit provider and that the Seller is a current credit provider to the Client;
- (c) whether the credit provider is a licensee;
- (d) 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);
- (e) details of the Client's credit history, including 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 direct recovery action commenced or alternatively that the Client 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);
- (f) information that, in the opinion of the Seller, the Client has committed a serious credit infringement;
- (g) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.7 The Client shall have the right to request (by e-mail) from the Seller:
- (a) a copy of the information about the Client retained by the Seller and the right to request that the Seller correct any incorrect information; and
- (b) that the Seller does not disclose any personal information about the Client to any third party without the Client's consent.
- 18.8 The Seller 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 stored in accordance with the law.
- 18.9 The Client 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 whether the Seller has complied with the request. 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.
- 19.1 **Service of Notices**
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) by faxing or 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;
- (f) if notice that is required to be given is 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.
- 19.2 **Trusts**
If the Client at any time upon or subsequent to entering into 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 Client consents to the Seller as follows:
- (a) the contract of purchase or sale of the Goods or the Services, 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 expose a party to any other action which might prejudice that right of indemnity;
- (c) the Client 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) any resignation, 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.
- 19.3 **General**
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.
- 19.4 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 is subject to the jurisdiction of the Macarochy Courts in Queensland.
- 19.5 Subject to clause 13 the Seller 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 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 Services).
- 19.6 The Seller may licence and/or assign all or any part of its rights and obligations under this contract to any other person. The Client cannot licence or assign without the written approval of the Seller.
- 19.7 The Seller may elect to subcontract out any part of the Services but shall not be released 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 the Seller's sub-contractors without the authority of the Seller.
- 19.8 The Client agrees to indemnify the Seller for these terms and conditions by notifying 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 the Seller to provide the Services to the Client.
- 19.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 19.10 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.