

TERMS & CONDITIONS OF TRADE

1. Definitions

- 1.1. "Company" means Vulcano Design Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Vulcano Design Pty Ltd.
- 1.2. "Consignment" means the business arrangement between the Company and the Trader.
- 1.3. "Customer" means the person/s buying the Goods from the Company or the Trader as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.4. "Delivery" means:
 - 1.4.1. the Customer, the Trader, the Customer's nominated carrier or the Traders nominated carrier or any other person, takes possession of the Goods at the Company's address; or
 - 1.4.2. the Company, or the Company's nominated carrier, delivers the Goods to the Customer or Trader's nominated address even if the Customer or Trader is not present at the address.
- 1.5. "Goods" means all Goods or Services supplied by the Company to the Customer or the Trader at the Trader's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.6. "GST" means Goods and Services Tax (GST) as defined within the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.7. "Price" means the Price payable for the Goods as agreed between the Company and the Trader and/or the Customer in accordance with clause 3 below.
- 1.8. "Trader" means the entity, company or person selling the goods to the Customer that are supplied by the Company to the Trader's business. If there is more than one Trader within a business this is a reference to each Trader jointly and severally.

2. Acceptance

- 2.1. The Trader and/or the Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Trader places an order for Delivery of the Goods.
- 2.2. These terms and conditions may only be amended with the Company's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Trader and/or the Customer and the Company.
- 2.3. The Trader undertakes to provide a copy of these terms and conditions to the Customer where it has supplied the Goods to the Customer.

3. Price and Payment

- 3.1. At the Company's sole discretion, the Price shall be either:
 - 3.1.1. as indicated on any invoice provided by the Company to the Customer or Trader; or
 - 3.1.2. the Company's quoted price (subject to clause 3.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

- 3.2. The Company reserves the right to change the Price in the event of a variation to the Company's quotation and any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties or as a result of increases to the Company in the cost of materials and labour or as a result of fluctuations in currency exchange rates) will be charged for on the basis of the Company's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 3.3. At the Company's sole discretion, a deposit may be required and will be payable in accordance with the direction of the Company.
- 3.4. The Price will be payable by the Trader and/or the Customer, with time being of the essence, on the date/s determined by the Company, which may be:
 - 3.4.1. on Delivery of the Goods;
 - 3.4.2. before Delivery of the Goods;
 - 3.4.3. thirty (30) days following the end of the month in which a statement is posted to the Trader's address or address for notices;
 - 3.4.4. the date specified on any invoice or other form as being the date for payment; or
 - 3.4.5. failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Trader and/or the Customer by the Company.
- 3.5. Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and one half percent (2.5%) of the Price), or by any other method as agreed to between the Trader and/or the Customer and the Company.
- 3.6. Unless otherwise stated the Price does not include GST. In addition to the Price the Trader and/or the Customer must pay to the Company an amount equal to any GST the Company must pay for any supply by the Company under this or any other agreement for the sale of the Goods.
- 3.7. The Trader and/or 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 Trader pays the Price. In addition, the Trader must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

4. Delivery of Goods

- 4.1. At the Company's sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.

The Trader and/or the Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. In the event that the Trader and/or the Customer is unable to take Delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 4.2. The Company 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.
- 4.3. Any time or date for Delivery given by the Company to the Trader or Customer is an estimate only and is not binding on the Company. The Trader or the Customer must still accept Delivery of the Goods even if late and the Company will not be liable for any loss or damage incurred by the Trader or the Customer as a result of the Delivery being late.
- 4.4. Once in the hands of the carrier the Company has no liability for the Goods. The Company shall not be liable for any loss, damage or personal injury whatsoever incurred in the transportation of the Goods.

5. Liability and Claims

- 5.1. The Company selects and sources the Goods from suppliers and manufacturers from around the world including the trademarked VULCANO CLAY™ Collections.
- 5.2. The Trader and/or the Customer acknowledges that variations of colour, shade and grain are inherent in all kiln fired products and natural stone and can result in irregularities that constitute an artisan product. While every effort will be taken by the Company to match colour, shade or grain of product, the Company shall not be liable for any loss, damages or costs howsoever arising resulting from any variation in colour, shading or grain between batches of product or sale samples and the final product supplied.
- 5.3. The Trader and/or the Customer acknowledges supply of some Goods may be limited and that it is the Trader's and/or Customer's responsibility to check quantities, with an on-site measurement before ordering the Goods or commencing fixing of the Goods. Measurements taken off plans or the Trader's figures by the Company are approximate only and no responsibility is taken for their accuracy.
- 5.4. If the Trader and/or Customer orders an insufficient number of tiles, then the Company will take no responsibility for any variation of colour in further batches supplied to the Trader.
- 5.5. The Company will not be liable to the Trader and/or Customer with respect to representations made by the Trader to the Customer as to the quality and appearance of the Goods nor to any nonconformity of the Goods with any sample shown to the Customer by the Trader.
- 5.6. Where the Company recommends specific fixing adhesive and finishing glazes, they accept no liability for products that are installed by a third party.
- 5.7. The Company will not be liable for any damage or defect in the Goods arising out of or resulting from installation of the Goods by a third party nor for use of any products used in the installation of the Goods such as sealant or glue.
- 5.8. The Company shall not be liable in any respect for advice provided regarding fixing, grouting, cleaning or maintenance of any product and the Trader and/or Customer should rely upon its own enquiries;
- 5.9. The Company offers no guarantee against crazing, cracking, chipping or scratching of the Goods;
- 5.10. The Trader and/or Customer is responsible to ensure the Goods are suitable in respect of their weight, durability, slip resistance and design for the Customers intended use.
- 5.11. The Company does not accept any claims arising from damage which has been caused by acids, chemical compounds or solvents used to clean the tiles and products after installation.

6. Indemnity

- 6.1. The Trader will indemnify and keep indemnified the Company from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company, and from and against all actions, proceedings, claims or demands made against the Company, arising from the supply of the Goods to the Customer and any acts, defaults, omissions, representations, conduct, negligence or breach of duty by the Trader, its employees, agents or contractors in relation to the Goods or the use of the Goods.

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

- 7.1. The Trader and/or Customer must inspect the Goods on Delivery and must within two (2) business days of Delivery notify the Company in writing of any evident defect/ damage, shortage in quantity, or failure to comply with the description or quote. The Trader and/or 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 Trader and/or Customer must allow the Company to inspect the Goods.

- 7.2. The Trader and/or Customer is not entitled to reject Goods if:
 - 7.2.1. the Trader and/or Customer has not complied with the provisions of clause 7.1;
 - 7.2.2. the Goods have been lost, destroyed or disposed of by the Trader and/or Customer;
 - 7.2.3. the Goods were damaged after being delivered to the Trader and/or Customer for reasons not related to their state or condition at the time of supply; or
 - 7.2.4. the Goods have been attached, fixed to, incorporated in, any real or personal property and they cannot be detached or isolated without damaging them.
- 7.3. For the avoidance of doubt, the Company will not be liable for shortage in quantity or Goods not in compliance with the description or quote where the Trader has failed to inspect the Goods and notify the Company within two (2) business days of Delivery.
- 7.4. In the event that the Trader and/or Customer provides the Company with a written direction to deliver the Goods directly to the Customer and the Company in its absolute discretion accepts this direction, the Trader and/or Customer will not be entitled to reject the Goods unless the Trader and/or Customer notifies the Company of any evident defect/damage, shortage in quantity or failure to comply with the description or quote within twenty-four (24) hours of Delivery.
- 7.5. 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).
- 7.6. If the Trader and/or Customer is a consumer within the meaning of the CCA, the Company's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 7.7. The Company acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 7.8. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Company makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods.
- 7.9. If the Trader and/or Customer takes action under the CCA the Company is not liable for any acts, defaults, representations, omissions, conduct or negligence of the Trader in its dealings with the Customer including but not limited to whether the Goods are fit for purpose and relies upon this clause and these terms and conditions to fullest extent permitted by law.
- 7.10. If the Trader and/or Customer is not a consumer within the meaning of the CCA, the Company's liability for any defect or damage in the Goods is:
 - 7.10.1. limited to any warranty to which the Company is entitled, if the Company did not manufacture the Goods;
 - 7.10.2. otherwise negated absolutely.
- 7.11. Subject to this clause 7.2, returns will only be accepted provided that:
 - 7.11.1. the Company has agreed that the Goods are defective; and
 - 7.11.2. the Goods are returned within a reasonable time at the Trader's and/or Customer's cost; and

- 7.11.3. the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 7.12. Notwithstanding clauses 7.1 to 7.10 but subject to the CCA, the Company shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- 7.12.1. the Trader and/or Customer failing to properly maintain or store any Goods;
 - 7.12.2. the Trader and/or Customer using the Goods for any purpose other than that for which they were designed;
 - 7.12.3. the Trader and/or Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - 7.12.4. the Trader and/or Customer failing to follow any instructions or guidelines provided by the Company;
 - 7.12.5. fair wear and tear, any accident, or an act of God.
- 7.13. The Company may in its absolute discretion accept non-defective Goods for return in which case the Company may require the Trader and/or Customer to pay handling fees of up to twenty five percent (25%) of the value of the returned Goods plus any freight costs.
- 7.14. Notwithstanding anything contained in this clause if the Company is required by a law to accept a return then the Company will only accept a return on the conditions imposed by that law.

8. Risk

- 8.1. Risk of damage to or loss of the Goods passes to the Trader and/or the Customer on Delivery and the Trader and/or the Customer must insure the Goods on or before Delivery.
- 8.2. If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Trader and/or the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
- 8.3. If the Trader and/or the Customer requests the Company to leave Goods outside the Company's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Trader's and/or the Customer's sole risk.

9. Title

- 9.1. The Company and the Trader and/or Customer agree that ownership of the Goods shall not pass until:
- 9.1.1. the Trader and/or Customer has paid the Company all amounts owing to the Company; and
 - 9.1.2. the Trader and/or Customer has met all of its other obligations to the Company.
- 9.2. Receipt by the Company 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. It is further agreed that:
- 9.2.1. until ownership of the Goods passes to the Trader in accordance with clause 9.1 that the Trader is only a bailee of the Goods and must return the Goods to the Company on request;

- 9.2.2. the Trader holds the benefit of the Trader's insurance of the Goods on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- 9.2.3. the Trader 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 Trader sells, disposes or parts with possession of the Goods then the Trader must hold the proceeds of any such act on trust for the Company and must pay or deliver the proceeds to the Company on demand;
- 9.2.4. the Trader should not convert or process the Goods or intermix them with other goods but if the Trader does so then the Trader holds the resulting product on trust for the benefit of the Company and must sell, dispose of or return the resulting product to the Company as it so directs;
- 9.2.5. the Trader irrevocably authorises the Company to enter any premises where the Company believes the Goods are kept and recover possession of the Goods;
- 9.2.6. the Company may recover possession of any Goods in transit whether or not Delivery has occurred;
- 9.2.7. the Trader 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 Company;
- 9.2.8. the Company may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Trader.

10. Goods on Consignment

- 10.1. The Company may, at its sole discretion, supply Goods to the Trader on consignment.
- 10.2. Where Goods are supplied on consignment the following provisions apply specifically to those Goods:
 - 10.2.1. the Company is the consignor and the Trader is the consignee and undertakes to sell the Goods;
 - 10.2.2. the Goods shall be at the Trader's risk from the time of Delivery and the Trader shall be responsible for insuring the Goods;
 - 10.2.3. the Trader accepts that the Goods are required to be displayed in a prominent sales position of the Trader's premises;
 - 10.2.4. the Trader may retain possession of the Goods until the Trader sells them or the Company requires that the Goods be returned to the Company's premises, whichever first occurs;
 - 10.2.5. if the Company requires the return of the Goods, any Delivery fees shall be at the cost of the Trader;
 - 10.2.6. the Trader shall notify the Company in writing within twenty-four (24) hours of all consignment Goods sold during the consignment period. Time for payment for the Goods shall be subject to clause 3.4.

11. Change in Control

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

12. Personal Property Securities Act 2009 (“PPSA”)

- 12.1. In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2. Upon assenting to these terms and conditions in writing the Trader and/or 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 that have previously been supplied and that will be supplied in the future by the Company to the Trader and/or Customer.
- 12.3. The Trader and/or Customer undertakes to:
 - 12.3.1. 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 Company may reasonably require to;
 - 12.3.1.1. register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - 12.3.1.2. register any other document required to be registered by the PPSA; or
 - 12.3.1.3. correct a defect in a statement referred to in clause 12.3.1.1 or 12.3.1.2;
 - 12.3.1.4. indemnify, and upon demand reimburse, the Company 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;
 - 12.3.1.5. not register a financing change statement in respect of a security interest without the prior written consent of the Company;
 - 12.3.1.6. not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Company;
 - 12.3.1.7. immediately advise the Company 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.
- 12.4. The Company and the Trader and/or Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 12.5. The Trader and/or Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6. The Trader and/or Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7. Unless otherwise agreed to in writing by the Company, the Trader and/or Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8. The Trader and/or Customer must unconditionally ratify any actions taken by the Company under clauses 12.3 to 12.5.
- 12.9. Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

13. Security and Charge

- 13.1. In consideration of the Company agreeing to supply the Goods, the Trader and/or 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 Trader and/or Customer either now or in the future, to secure the performance by the Trader and/or Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

- 13.2. The Trader and/or Customer indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause.
- 13.3. The Trader and/or Customer irrevocably appoints the Company and each director of the Company as the Trader's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Trader's and/or Customer's behalf.

14. Intellectual Property

- 14.1. Where the Company has designed, drawn or developed Goods for the Trader and/or Customer, then the copyright in any designs and drawings and documents shall remain the property of the Company.
- 14.2. The Trader warrants that all designs, specifications or instructions given to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Customer or Trader's order and the Trader agrees to indemnify the Company against any action taken by a third party against the Company in respect of any such infringement.

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 Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2. If the Trader and/or Customer owes the Company any money the Trader and/or Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Company's collection agency costs, and bank dishonour fees).
- 15.3. Without prejudice to any other remedies the Company may have, if at any time the Trader and/or Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Company may suspend or terminate the supply of Goods to the Trader and/or Customer. The Company will not be liable to the Trader and/or Customer for any loss or damage the Trader and/or Customer suffers because the Company has exercised its rights under this clause.
- 15.4. Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Trader and/or Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable if:
 - 15.4.1. any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to make a payment when it falls due;
 - 15.4.2. the Trader 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
 - 15.4.3. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Trader or any asset of the Trader.

16. Cancellation

- 16.1. The Company 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 Trader and/or Customer. On giving such notice the Company shall repay to the Trader and/or Customer any money paid by the Trader and/or Customer for the Goods. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2. In the event that the Trader and/or Customer cancels Delivery of Goods the Trader and/or Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Company as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 16.3. Cancellation of orders for Goods made to the Trader's and/or Customer's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

17. Privacy Act 1988

- 17.1. The Trader agrees for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Trader in relation to credit provided by the Company.
- 17.2. The Trader agrees that the Company may exchange information about the Trader with those credit providers either named as trade referees by the Trader or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - 17.2.1. to assess an application by the Trader; and/or
 - 17.2.2. to notify other credit providers of a default by the Trader; and/or
 - 17.2.3. to exchange information with other credit providers as to the status of this credit account, where the Trader is in default with other credit providers; and/or
 - 17.2.4. to assess the creditworthiness of the Trader.
- 17.3. The Trader understands that the information exchanged can include anything about the Trader's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the *Privacy Act 1988*.
- 17.4. The Trader consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988*). The Trader agrees that personal credit information provided may be used and retained by the Company for the following purposes (and for other purposes as shall be agreed between the Trader and Company or required by law from time to time):
 - 17.4.1. the provision of Goods; and/or
 - 17.4.2. the marketing of Goods by the Company, its agents or distributors; and/or
 - 17.4.3. analysing, verifying and/or checking the Trader's credit, payment and/or status in relation to the provision of Goods; and/or
 - 17.4.4. processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Trader; and/or
 - 17.4.5. enabling the daily operation of Trader's account and/or the collection of amounts outstanding in the Trader's account in relation to the Goods.
- 17.5. The Company may give information about the Trader to a credit reporting agency for the following purposes:

- 17.5.1. to obtain a consumer credit report about the Trader; or
- 17.5.2. allow the credit reporting agency to create or maintain a credit information file containing information about the Trader.
- 17.6. The information given to the credit reporting agency may include:
 - 17.6.1. personal particulars (the Trader's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - 17.6.2. details concerning the Trader's application for credit or commercial credit and the amount requested;
 - 17.6.3. advice that the Company is a current credit provider to the Trader;
 - 17.6.4. advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - 17.6.5. that the Trader's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - 17.6.6. information that, in the opinion of the Company, the Trader has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Trader's credit obligations);
 - 17.6.7. advice that cheques drawn by the Trader for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - 17.6.8. that credit provided to the Trader by the Company has been paid or otherwise discharged.

18. General

- 18.1. The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision.
- 18.2. 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.
- 18.3. These terms and conditions and any contract to which they apply shall be governed by the laws of the state of New South Wales and are subject to the jurisdiction of the courts in that state.
- 18.4. The Company shall be under no liability whatsoever to the Trader and/or Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Trader arising out of a breach by the Company of these terms and conditions (alternatively the Company's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 18.5. The Trader and/or Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Trader and/or Customer by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 18.6. The Company may license or sub-contract all or any part of its rights and obligations without the Trader's and/or Customer's consent.
- 18.7. The Trader and/or Customer agrees that the Company may amend these terms and conditions at any time. If the Company makes a change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Trader and/or

Customer of such change. The Trader and/or Customer will be taken to have accepted such changes if the Trader and/or Customer makes a further request for the Company to provide Goods.

- 18.8. The Trader and/or Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it has capacity, it is not insolvent or bankrupt and that this agreement creates binding and valid legal obligations on it.