Elson Australasia Pty Ltd – 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 "Elson Aust" means Elson Australasia Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Elson Australasia Pty Ltd.

1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Elson Aust 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 Elson Aust 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 "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.

1.6 "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 making enquiries 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.**

1.7 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Elson Aust and the Customer in accordance with clause 5 below.

1.8 "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 that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Elson Aust and it has been approved with a credit limit established for the account.

2.5 In the event that the supply of Goods request exceeds the Customers credit limit and/or the account exceeds the payment terms, Elson Aust reserves the right to refuse Delivery.

2.6 All literature, samples, specifications, submitted with this quotation is expressly illustrative and is by way of a general description of Goods only in accordance with industry standards. Any descriptions, dimensions or specifications contained in catalogues and other advertising material while being as accurate as possible but may not necessarily be identical with Goods Elson Aust is to supply. Elson Aust will not accept liability to the Customer for quality of Goods which comply with accepted industry standards.

2.7 The Customer acknowledges and accepts that 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, Elson Aust reserves the right to vary the Price with alternative Goods as per clause 5.2, subject to prior confirmation and agreement of both parties.

2.8 The Customer acknowledges and accepts that the Minimum Order for the following areas is:
(a) one hundred dollars ($100), for Sydney, Wollongong, Newcastle and Central Coast;
(b) one hundred and fifty dollars ($150), for Australian Capital Territory, Adelaide, Brisbane, Gold Coast, Melbourne, NSW Country and Sunshine Coast;
(c) two hundred and fifty dollars ($250), for Victoria Country, South Queensland Country (up to Bundaberg; and
(d) five hundred dollars ($500), for Western Australia, Tasmania, South Australia Country, North Queensland Country.

2.9 Orders that do not meet the required Minimum Order (in accordance with clause 2.8) will be charged in addition to the Price the cost of delivery from Elson Aust National Distribution Centre to the Customer delivery address. Orders that equal or exceed the Minimum Order required will be exempt from these delivery costs.

2.10 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

3.1 The Customer acknowledges and accepts that Elson Aust 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 Elson Aust 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 Elson Aust 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 Elson Aust; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

4.1 The Customer shall give Elson Aust 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 Elson Aust as a result of the Customer's failure to comply with this clause.

5. Price and Payment

5.1 At Elson Aust's sole discretion, the Price shall be either:
(a) as indicated on any invoice provided by Elson Aust to the Customer; or
(b) the Price as at the date of Delivery of the Goods according to Elson Aust's current price list; or
(c) Elson Aust's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

5.2 Elson Aust reserves the right to change the Price if a variation to Elson Aust's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods which are beyond Elson Aust's control (including, but not limited to, any variation as a result of increases to Elson Aust in the cost of labour, materials or overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges, or unforeseen circumstances), or if during the course of the Services the Goods are not or cease to be available from Elson Aust third party suppliers, then Elson Aust reserves the right to provide alternate Goods. Variations will be charged for on the basis of Elson Aust's quotation, and will be detailed in writing, and shown as variations on Elson Aust's invoice. The Customer shall be required to respond to any variation submitted by Elson Aust within ten (10) working days. Failure to do so will entitle Elson Aust 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.

5.3 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Elson Aust, which may be:
(a) by way of instalments/progress payments in accordance with Elson Aust's payment schedule;
(b) the date specified on any invoice or other form as being the date for payment; or
(c) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Customer by Elson Aust.

5.4 Payment may be made by 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 Elson Aust.

5.5 Elson Aust may in its discretion allocate any payment received from the Customer towards any invoice that Elson Aust determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Elson Aust may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Elson Aust, payment will be deemed to be allocated in such manner as preserves the maximum value of Elson Aust's Purchase Money Security Interest (as defined in the PPSA) in the Goods.

5.6 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 Elson Aust nor to withhold payment of any invoice because part of that invoice is in dispute.

5.7 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Elson Aust an amount equal to any GST Elson Aust must pay for any supply by Elson Aust under this or any other Contract 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.

6. Delivery of Goods

6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
(a) the Customer or the Customer's nominated carrier takes possession of the Goods at Elson Aust's address; or
(b) Elson Aust (or Elson Aust's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

6.2 At Elson Aust's sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.

6.3 Elson Aust 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.

6.4 Any time specified by Elson Aust 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. Elson Aust 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 Elson Aust shall be entitled to charge a reasonable fee for redelivery and/or storage.

7. Risk

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

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

7.3 If the Customer requests Elson Aust to leave Goods outside Elson Aust'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.

7.4 The Customer acknowledges that it is their responsibility to ensure that all Goods, plant or equipment which Elson Aust is to supply are of the correct type, size, standard, quality, colour and finish, conform with all relevant Australian standards and local statutory requirements, and are as specified in the specifications, drawings and plans upon which Elson Aust based the quotation and therefore, the Customer agrees to indemnify Elson Aust against any costs incurred by Elson Aust in rectifying such errors if required.

8. Title

Elson Aust and the Customer agree that ownership of the Goods shall not pass until:
(a) the Customer has paid Elson Aust all amounts owing to Elson Aust; and
(b) the Customer has met all of its other obligations to Elson Aust.

8.1 Receipt by Elson Aust 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.

8.2 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 8.1:
(a) the Customer is only a bailee of the Goods and must return the Goods to Elson Aust on request;
(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Elson Aust and must pay to Elson Aust 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 Elson Aust and must pay or deliver the proceeds to Elson Aust 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 Elson Aust and must sell, dispose of or return the resulting product to Elson Aust as it so directs;
(e) the Customer irrevocably authorises Elson Aust to enter any premises where Elson Aust believes the Goods are kept and recover possession of the Goods;
(f) Elson Aust 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 Elson Aust;
(h) Elson Aust may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

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

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

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

9.1 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 Elson Aust may reasonably require to;
(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
(ii) register any other document required to be registered by the PPSA; or
(iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
(b) indemnify, and upon demand reimburse, Elson Aust 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 Elson Aust;
(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 Elson Aust;
(e) immediately advise Elson Aust of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

9.2 Elson Aust and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

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

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

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

9.6 The Customer must unconditionally ratify any actions taken by Elson Aust under clauses 9.3 to 9.5.

9.7 Subject to any express provisions to the contrary (including those contained in these clauses 9), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

9.8 Security and Charge

9.8 In consideration of Elson Aust 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).

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

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

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

10.1 The Customer must inspect the Goods on Delivery and must within seven (7) days of Delivery notify Elson Aust 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 Elson Aust to inspect the Goods.

10.2 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**).

10.3 Elson Aust acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

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

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

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

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

10.8 Subject to this clause 11, returns will only be accepted provided that:
(a) the Customer has complied with the provisions of clause 11.1; and
(b) Elson Aust has agreed that the Goods are defective; and
(c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

11. Warranties

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

11.2 Elson Aust may in its absolute discretion accept non-defective Goods for return in which case Elson Aust may require the Customer to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.

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

12. Intellectual Property

Where Elson Aust has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Elson Aust. Under no circumstances may such designs, drawings and documents be used without the express written approval of Elson Aust.

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

12.2 The Customer agrees that Elson Aust may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Elson Aust has created for the Customer.

13. Default and Consequences of Default

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

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

13.3 Further to any other rights or remedies Elson Aust may have under this Contract, if a Customer has made payment to Elson Aust, 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 Elson Aust under this clause 13 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.

13.4 Without prejudice to Elson Aust's other remedies at law Elson Aust shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Elson Aust shall, whether or not due for payment, become immediately payable if:
(a) any money payable to Elson Aust becomes overdue, or in Elson Aust'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 Elson Aust;
(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.

14. Cancellation

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

14.2 Elson Aust 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 Elson Aust shall repay to the Customer any money paid by the Customer for the Goods. Elson Aust shall not be liable for any loss or damage whatsoever arising from such cancellation.

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

14.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

15. Privacy Policy

15.1 All emails, documents, images or other recorded information held or used by Elson Aust is Personal Information, as defined and referred to in clause 15.3, and therefore considered Confidential Information. Elson Aust 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"). Elson Aust acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by Elson Aust that may result in serious harm to the Customer, Elson Aust 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.

15.2 Notwithstanding clause 15.1, privacy limitations will extend to Elson Aust in respect of Cookies where transactions for purchases/orders transpire directly from Elson Aust's website. Elson Aust 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 Elson Aust when Elson Aust sends an email to the Customer, so Elson Aust may collect and review that information ("collectively Personal Information")

15.3 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 Elson Aust's website.

15.4 The Customer agrees for Elson Aust 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 Elson Aust.

15.5 The Customer agrees that Elson Aust may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
(a) to assess an application by the Customer; and/or
(b) to notify other credit providers of a default by the Customer; and/or
(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.

15.6 The Customer consents to Elson Aust being given a consumer credit report to collect overdue payment on commercial credit.

15.7 The Customer agrees that personal credit information provided may be used and retained by Elson Aust for the following purposes (and for other agreed purposes or required by):
(a) the provision of Goods; and/or
(b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
(d) enabling the collection of amounts outstanding in relation to the Goods.

15.8 Elson Aust 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.

The information given to the CRB may include:
(a) Personal Information as outlined in 15.3 above;
(b) name of the credit provider and that Elson Aust 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 Elson Aust has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
(g) information that, in the opinion of Elson Aust, the Customer has committed a serious credit infringement;
(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars ($150).

15.9 The Customer shall have the right to request (by e-mail) from Elson Aust:
(a) a copy of the Personal Information about the Customer retained by Elson Aust and the right to request that Elson Aust correct any incorrect Personal Information; and
(b) that Elson Aust does not disclose any Personal Information about the Customer for the purpose of direct marketing.

15.10 Elson Aust 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.

15.11 The Customer can make a privacy complaint by contacting Elson Aust via e-mail. Elson Aust will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

16. Service of Notices

16.1 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.

16.2 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.

17. Trusts

17.1 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 Elson Aust may have notice of the Trust, the Customer covenants with Elson Aust 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 Elson Aust (Elson Aust 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.

18. General

18.1 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.

18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which Elson Aust has its principal place of business, and are subject to the jurisdiction of the Parramatta Courts in that state.

18.3 Subject to clause 11, Elson Aust 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 Elson Aust of these terms and conditions (alternatively Elson Aust's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

18.4 Elson Aust may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.

18.5 The Customer cannot licence or assign without the written approval of Elson Aust.

18.6 The Customer agrees that Elson Aust 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 Elson Aust to provide Goods to the Customer.

18.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

18.8 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.

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