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## Street Furniture Australia Pty Ltd – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 "SFA" means Street Furniture Australia Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Street Furniture Australia Pty Ltd.
- 1.2 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting SFA 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 part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.3 "Goods" means all Goods or Services supplied by SFA 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).
- 1.4 "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.
- 1.5 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.6 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between SFA and the Customer in accordance with clause 6 below.
- 1.7 "GST" means Goods and Services Tax (GST) 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 Any advice, recommendation, information, assistance or service provided by SFA in relation to Goods or Services supplied is given in good faith, is based on SFA's own knowledge and experience and shall be accepted without liability on the part of SFA and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods or Services.
- 2.5 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with SFA and it has been approved with a credit limit established for the account.
- 2.6 In the event that the supply of Goods request exceeds the Customer's credit limit and/or the account exceeds the payment terms, SFA reserves the right to refuse delivery and/or request an alternative payment method.
- 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, SFA reserves the right to vary the Price with alternative Goods as per clause 6.2.
- 2.8 The Customer shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
- 2.9 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 SFA 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 SFA 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 SFA 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 SFA; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

### 4. Authorised Representative

- 4.1 The Customer acknowledges that SFA shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to SFA, that person shall have the full authority of the Customer to order any Services and/or to request any variation thereto on the Customer's behalf. The Customer accepts that they will be solely liable to SFA for all additional costs incurred by SFA (including SFA's profit margin) in providing any Services or variation/s requested thereto by the Customer's duly authorised representative.

### 5. Change in Control

- 5.1 The Customer shall give SFA 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, or business practice). The Customer shall be liable for any loss incurred by SFA as a result of the Customer's failure to comply with this clause.

### 6. Price and Payment

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- 6.1 At SFA's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by SFA to the Customer; or
  - (b) SFA's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 SFA reserves the right to change the Price if a variation to SFA's quotation is requested. Any variations (including, but not limited to the availability of stock or increases to SFA in the cost of taxes, levies, materials and labour etc) will be charged for on the basis of SFA's quotation, and will be detailed in writing, and shown as variations on SFA's invoice. The Customer shall be required to respond to any variation submitted by SFA within ten (10) working days. Failure to do so will entitle SFA to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.3 At SFA's sole discretion, a deposit may be required for cash sales.
- 6.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by SFA, which may be:
- (a) on delivery of the Goods;
  - (b) before delivery of the Goods for cash sales;
  - (c) by way of instalments/progress payments in accordance with SFA's payment schedule;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Customer by SFA.
- 6.5 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 SFA.
- 6.6 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 SFA nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to SFA an amount equal to any GST SFA must pay for any supply by SFA 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.

### 7. Delivery of Goods

- 7.1 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 SFA's address; or
  - (b) SFA (or SFA's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.2 Subject to clause 7.3 it is SFA's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 7.3 The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that SFA claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond SFA's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
  - (b) have the site ready for the Services; or
  - (c) notify SFA that the site is ready.
- 7.4 At SFA's sole discretion, the cost of delivery is in addition to the Price.
- 7.5 SFA may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.6 Any time specified by SFA for delivery of the Goods is an estimate only and SFA will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that SFA is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then SFA shall be entitled to charge a reasonable fee for redelivery and/or storage.

### 8. Risk

- 8.1 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.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, SFA is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by SFA is sufficient evidence of SFA's rights to receive the insurance proceeds without the need for any person dealing with SFA to make further enquiries.
- 8.3 If the Customer requests SFA to leave Goods outside SFA's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 8.4 Where SFA is required to install the Goods the Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and SFA shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 8.5 The Customer acknowledges that Goods supplied may:
- (a) exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. SFA will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and
  - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
  - (c) mark or stain if exposed to certain substances; and
  - (d) be damaged or disfigured by impact or scratching.
- 8.6 Timber is a hygroscopic material subject to expansion and contraction, therefore SFA will accept no responsibility for gaps that may appear during prolonged dry periods.

**9. Accuracy of Customers Plans and Measurements**

- 9.1 SFA shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, SFA accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9.2 In the event the Customer gives information relating to measurements and quantities of the Goods required to complete the Services, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or SFA places an order based on these measurements and quantities. SFA accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.

**10. Specifications**

- 10.1 The Customer acknowledges that all descriptive specifications, illustrations, dimensions and weights stated in SFA's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by SFA.

**11. Access**

- 11.1 The Customer shall ensure that SFA has clear and free access to the site at all times to enable them to undertake the Services. SFA shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of SFA.
- 11.2 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks. The Customer agrees to indemnify SFA against all costs incurred by SFA in recovering such vehicles in the event they become bogged or otherwise immovable.

**12. Underground and Hidden Services**

- 12.1 Prior to SFA commencing the Services the Customer must advise SFA of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the site.
- 12.2 Whilst SFA will take all care to avoid damage to any underground services the Customer agrees to indemnify SFA in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.

**13. Title**

- 13.1 SFA and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid SFA all amounts owing to SFA; and
  - (b) the Customer has met all of its other obligations to SFA.
- 13.2 Receipt by SFA of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 13.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 13.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to SFA on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for SFA and must pay to SFA 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 SFA and must pay or deliver the proceeds to SFA 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 SFA and must sell, dispose of or return the resulting product to SFA as it so directs.
  - (e) the Customer irrevocably authorises SFA to enter any premises where SFA believes the Goods are kept and recover possession of the Goods.
  - (f) SFA 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 SFA.
  - (h) SFA may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

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

- 14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 14.2 Upon assenting to these terms and conditions in writing the 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 SFA for Services – that have previously been supplied and that will be supplied in the future by SFA to the Customer.
- 14.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which SFA 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

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- (iii) correct a defect in a statement referred to in clause 14.3(a)(i) or 14.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, SFA 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 SFA;
  - (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 SFA;
  - (e) immediately advise SFA 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.
- 14.4 SFA 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.
- 14.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 14.7 Unless otherwise agreed to in writing by SFA, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.8 The Customer must unconditionally ratify any actions taken by SFA under clauses 14.3 to 14.5.
- 14.9 Subject to any express provisions to the contrary (including those contained in this clause 14) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 15. Security and Charge**
- 15.1 In consideration of SFA 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).
- 15.2 The Customer indemnifies SFA from and against all SFA's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SFA's rights under this clause.
- 15.3 The Customer irrevocably appoints SFA and each director of SFA as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer's behalf.
- 16. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 16.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify SFA 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 SFA to inspect the Goods.
- 16.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 16.3 SFA acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, SFA makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. SFA's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.5 If the Customer is a consumer within the meaning of the CCA, SFA's liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.6 If SFA is required to replace the Goods under this clause or the CCA, but is unable to do so, SFA may refund any money the Customer has paid for the Goods.
- 16.7 If the Customer is not a consumer within the meaning of the CCA, SFA'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 SFA at SFA's sole discretion;
  - (b) limited to any warranty to which SFA is entitled, if SFA did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 16.8 Subject to this clause 16, returns will only be accepted provided that:
  - (a) the Customer has complied with the provisions of clause 16.1; and
  - (b) SFA 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.
- 16.9 Notwithstanding clauses 16.1 to 16.8 but subject to the CCA, SFA 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 SFA;
  - (e) fair wear and tear, any accident, or act of God.
- 16.10 SFA may in its absolute discretion accept non-defective Goods for return in which case SFA may require the Customer to pay handling fees of up to thirty percent (30%) of the value of the returned Goods plus any freight costs.
- 16.11 Notwithstanding anything contained in this clause if SFA is required by a law to accept a return then SFA will only accept a return on the conditions imposed by that law.
- 17. Intellectual Property**

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- 17.1 Where SFA has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of SFA. Under no circumstances may such designs, drawings and documents be used without the express written approval of SFA.
- 17.2 The Customer agrees that SFA may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which SFA has created for the Customer.

### 18. Default and Consequences of Default

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

### 19. Cancellation

- 19.1 Without prejudice to any other remedies SFA may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions SFA may suspend or terminate the supply of Goods to the Customer. SFA will not be liable to the Customer for any loss or damage the Customer suffers because SFA has exercised its rights under this clause.
- 19.2 SFA 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 SFA shall repay to the Customer any money paid by the Customer for the Goods. SFA shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 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 SFA as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.4 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.

### 20. Privacy Policy

- 20.1 All emails, documents, images or other recorded information held or used by SFA is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. SFA 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"). SFA acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by SFA that may result in serious harm to the Customer, SFA 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.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to SFA in respect of Cookies where transactions for purchases/orders transpire directly from SFA's website. SFA 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 SFA when SFA sends an email to the Customer, so SFA may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via SFA's website.
- 20.3 The Customer agrees for SFA 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 SFA.
- 20.4 The Customer agrees that SFA 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

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- (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.
  - 20.5 The Customer consents to SFA being given a consumer credit report to collect overdue payment on commercial credit.
  - 20.6 The Customer agrees that personal credit information provided may be used and retained by SFA 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.
  - 20.7 SFA 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.
  - 20.8 The information given to the CRB may include:
    - (a) Personal Information as outlined in 20.3 above;
    - (b) name of the credit provider and that SFA 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 SFA has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
    - (g) information that, in the opinion of SFA, 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).
  - 20.9 The Customer shall have the right to request (by e-mail) from SFA:
    - (a) a copy of the Personal Information about the Customer retained by SFA and the right to request that SFA correct any incorrect Personal Information; and
    - (b) that SFA does not disclose any Personal Information about the Customer for the purpose of direct marketing.
  - 20.10 SFA 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.
  - 20.11 The Customer can make a privacy complaint by contacting SFA via e-mail. SFA 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](http://www.oaic.gov.au).
- 21. Compliance with Laws**
- 21.1 The Customer and SFA shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
  - 21.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 22. Building and Construction Industry Security of Payments Act 1999**
- 22.1 At SFA's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
  - 22.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.
- 23. Service of Notices**
- 23.1 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.
  - 23.2 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.
- 24. Trusts**
- 24.1 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 SFA may have notice of the Trust, the Customer covenants with SFA 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;

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- (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 SFA (SFA 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.

**25. General**

- 25.1 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.
- 25.2 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 SFA has its principal place of business, and are subject to the jurisdiction of the Parramatta Local Courts in New South Wales.
- 25.3 Subject to clause 16 SFA 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 SFA of these terms and conditions (alternatively SFA's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 25.4 SFA may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 25.5 The Customer cannot licence or assign without the written approval of SFA.
- 25.6 SFA may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of SFA's sub-contractors without the authority of SFA.
- 25.7 The Customer agrees that SFA 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 SFA to provide Goods to the Customer.
- 25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 25.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.