

CLIENT INFORMATION FORM

***** Note: Please complete ALL sections and read the Terms and Conditions of Trade overleaf or attached. *****

Client's Details: <input type="checkbox"/> Individual/Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other:			
Registered Business/Company Name:			
Delivery/Physical Address:		State:	Postcode:
Billing Address:		State:	Postcode:
Email Address:			
Phone No:	Fax No:	Mobile No:	
Business Details: (please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)			
Trading Name:			
ABN:	ACN:	Date Established (current owners):	
Contact Person:		Phone No:	
Nature of Business:			
Personal Details: (please complete if you are an Individual)			
D.O.B.		Driver's Licence No:	
Directors / Owners / Trustee: (if more than two, please attach a separate sheet)			
(1) Full Name:		D.O.B.	
Private Address:		State:	Postcode:
Driver's Licence No:	Phone No:	Mobile No:	
(2) Full Name:		D.O.B.	
Private Address:		State:	Postcode:
Driver's Licence No:	Phone No:	Mobile No:	
Contacts:			
Accounts Payable Contact:		Direct Phone:	
Accounts payable Email:		Facsimile:	
Chef / Cook Contact:			
Chef / Cook Email:		Direct Phone:	
Trade References: (Three required)			
Company:	Contact:	Phone No:	
Company:	Contact:	Phone No:	
Company:	Contact:	Phone No:	
Requested Terms:			
<input type="checkbox"/> COD <input type="checkbox"/> 7 days with Personal/Directors Guarantee and Indemnity		Requested Credit Limit: \$	Payment Method: <input type="checkbox"/> COD <input type="checkbox"/> EFT <input type="checkbox"/> CC
Credit Card: PLEASE ASK YOUR SALES REP FOR AN AUTHORIZATION FORM		Incurs 1.5% processing fee	

**** Please note: Accounts trading 14 days outside their agreed terms will be placed immediately 'on stop'. ****

**** By signing this declaration, you agree that you understand your obligation to Bravo Foods Pty Ltd **.**

I certify that the above information is true and correct and that I accept the supply of credit by the Seller (if applicable). I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Bravo Foods Pty Ltd which form part of, and are intended to be read in conjunction with this Client Information Form and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. **I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.**

SIGNED (CLIENT): _____ SIGNED (SELLER): _____

Name: _____ Name: _____

Position: _____ Position: _____

WITNESS TO CLIENT'S SIGNATURE SIGNED: _____ Name: _____ Date: _____

OFFICE USE ONLY:						
TERMS	CREDIT LIMIT	SALES REP	ACC / SPF #	SPF / BRAVO	PPSR	DATE / ENTERED BY
				<input type="checkbox"/> SPF or <input type="checkbox"/> Bravo		

Personal/Directors Guarantee and Indemnity

This Guarantee and Indemnity is made in consideration of Bravo Foods Pty Ltd and its successors and assigns ("**the Seller**") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to _____ ("**the Client**").

1. **I/We have received, read and understood the Seller's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
2. **Guarantee**
 - (a) The Guarantor guarantees the due and punctual payment to the Seller of all monies which are now owing to the Seller by the Client and all further sums of money from time to time owing to the Seller by the Client in respect of goods and services supplied or to be supplied by the Seller to the Client or any other liability of the Client to the Seller.
 - (b) The Guarantor guarantees the due observance and performance by the Client of all its obligations contained or implied in any contract with the Seller, including but not limited to the Terms & Conditions of Trade signed by the Client and annexed to this Guarantee and Indemnity.
 - (c) If for any reason the Client does not pay any amount owing to the Seller the Guarantor will immediately on demand pay the relevant amount to the Seller.
3. **Security and Charge**
 - (a) In consideration of the Seller agreeing to supply the goods to the Client, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 ("PPSA") and unequivocally consents to the Seller registering any interest so charged.
 - (b) Furthermore, it is agreed by both parties that where the Guarantor is acting in the capacity as a trustee for a trust, then the Guarantor agrees to charge all its right title and interest in any land realty, or other assets capable of being charged in its own capacity and in its capacity as trustee and shall be subject to the PPSA Registration as stated above.
 - (c) The Guarantor irrevocably appoints the Seller and each director of the Seller as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which the Seller may reasonably require to:
 - (d) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (e) register any other document required to be registered by the PPSA or any other law; or
 - (f) correct a defect in a statement referred to in clause 1(a) or 1(b).
4. **Indemnity**

The Guarantor shall indemnify the Seller on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, the Seller in connection with:

 - (a) the supply of goods and/or services to the Client; or
 - (b) the recovery of monies owing to the Seller by the Client including the enforcement of this Guarantee and Indemnity, and including but not limited to the Seller's nominees contract default fee and legal costs; or
 - (c) monies paid by the Seller with the Client's consent in settlement of a dispute that arises or results from a dispute between, the Seller, the Client, and a third party or any combination thereof, over the supply of goods and/or services by the Seller to the Client.
5. **Continuity and Preservation of Guarantor's Obligations**
 - (a) This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of monies owing to the Seller by the Client and all obligations herein have been fully paid, satisfied and performed.
 - (b) No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to bring a claim on the Seller's part (whether in respect of the Client or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Client's obligations to the Seller, each Guarantor shall be a principal debtor and liable to the Seller accordingly.
 - (c) If any payment received or recovered by the Seller is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Seller shall each be restored to the position in which they would have been had no such payment been made.
6. **Joint and Several Guarantee**

The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires. Any condition or agreement under this Guarantee by or in favour of two or more persons is deemed to bind them jointly and severally, or be in favour of each of them severally. If the term Guarantor comprises more than one person the Seller may at any time, and from time to time, proceed against any or all of them in respect of the Guarantor's Obligations as the Seller may choose in its absolute discretion, and the Seller is not to be obliged to make any claim against all the persons comprising the Guarantor.
7. **Privacy Act 1988 (Cth)**

- (a) The Guarantor authorises the Seller to obtain from any person or company any information which the Seller may require for credit reference purposes.
- (b) The Guarantor further irrevocably authorises the Seller to provide to any third party, in response to credit references and enquiries about the Client or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that the Client or Guarantor may have with the Seller as a result of this Guarantee and Indemnity being actioned by the Seller.
- (c) The above information is to be used by the Seller for all purposes in connection with the Seller considering this Guarantee and Indemnity and the subsequent enforcement of the same.

8. Representations and warranties by the Guarantor

Except as may be otherwise disclosed in writing to the Seller at or before the date of this Guarantee, the Guarantor makes the following representations and warranties for the benefit of the Seller, and acknowledges that the Seller has executed this Guarantee and agreed to take part in the transactions that this Guarantee contemplates in reliance on the following representations and warranties:

(a) Status

The Client is a company duly incorporated and validly existing under the Corporations Act and is not in liquidation or receivership or under administration or if the Client is a natural person, the Client is not a bankrupt, of unsound mind or incapable of managing his or her own affairs.

(b) Power

The Guarantor has all requisite power to own its property and carry on its business, and to execute, deliver and perform this Guarantee and that execution and performance has been duly authorised by all necessary or appropriate actions.

(c) Legal obligations

This Guarantee is legal, valid and binding, and is enforceable against the Guarantor in accordance with its terms.

(d) Non-default

The Guarantor is not in default under any law, regulation, official directive, undertaking or agreement by which it is bound, being a default which would be likely to have a material adverse effect on its ability to observe and perform its obligations under this Guarantee.

(e) Litigation

No litigation, arbitration, mediation, conciliation or administrative proceeding has been commenced or is pending or threatened before, and no judgment or award has been given or made by, any court or other tribunal or governmental agency involving the Guarantor which, if adversely determined, would be likely to have a material adverse effect on its ability to observe and perform its obligations under this Guarantee.

(f) Other information

The other information and reports (if any) that the Guarantor has given to the Beneficiary in connection with this Guarantee are true and accurate in all material respects and not misleading in any material respect (including by omission), and any forecasts and opinions in them are fair and reasonable (and were made or formed after the due inquiry and consideration by appropriate officers of the Guarantor), as at the date of this document or, if given later, when given.

(g) Disclosure of relevant information

The Guarantor has disclosed to the Beneficiary all other information that is material to an assessment by the Beneficiary of the risks that it assumes by entering into this Guarantee.

9. Independent Legal Advice

The Guarantor has been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Client to the Seller.

<p>GUARANTOR-1</p> <p>SIGNED: _____</p> <p>FULL NAME: _____</p> <p>HOME ADDRESS: _____</p> <p>DATE OF BIRTH: _____</p> <p>SIGNATURE OF WITNESS: _____</p> <p>NAME OF WITNESS: _____</p> <p>OCCUPATION: _____</p> <p>PRESENT ADDRESS: _____</p> <p>DATE: _____</p>
--

<p>GUARANTOR-2</p> <p>SIGNED: _____</p> <p>FULL NAME: _____</p> <p>HOME ADDRESS: _____</p> <p>DATE OF BIRTH: _____</p> <p>SIGNATURE OF WITNESS: _____</p> <p>NAME OF WITNESS: _____</p> <p>OCCUPATION: _____</p> <p>PRESENT ADDRESS: _____</p> <p>DATE: _____</p>
--

Bravo Foods Pty Ltd - Terms & Conditions of Trade

By submitting a Credit Application, making a Purchase Order or receiving Goods from the Seller, the Client agrees to be bound to the following Terms and Conditions of Trade. These Terms and Conditions create a security interest in favour of the Seller for the purposes of the Personal Property Securities Act 2009 (Cth).

1. Definitions

In this agreement:

Agreement means these Terms and Conditions of Trade, each Purchase Order delivered by the Client to the Seller for the supply of Goods and any Credit Application (as applicable);

Client means the person/s buying the Goods as specified in any Agreement, Invoice, Purchase Order or Quotation, and if there is more than one Client is a reference to each Client jointly and severally. This includes the executors, administrators, successors and permitted assignees of that person or company;

Credit Application means the application made or to be made by the Client for credit to be provided by the Seller to the Client;

Goods means all Goods or Services supplied by the Seller to the Client at the Client's request from time to time in accordance with a Purchase Order and/or this Agreement (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).

Price means the Price payable for the Goods as agreed between the Seller and the Client in accordance with clause 4 below.

Purchase Order means any order or request made by the Client for the supply by the Seller of Goods and/or services in any form and includes an oral request for the supply of goods, or an invoice, proposal or quote provided by the Seller at the Client's request;

Seller means Bravo Foods Pty Ltd, its successors and assignees or any person acting on behalf of and with the authority of Bravo Foods Pty Ltd

2. Interpretation

2.1 These Terms and Conditions, any Purchase Order and/or any Credit Application will be read and interpreted as a single Agreement but if there is any conflict or inconsistency between any Credit Application, these Terms and Conditions and/or any Purchase Order, the various parts of the Agreement will be interpreted and applied in the following order:

- (a) firstly, these Terms and Conditions of Trade;
- (b) secondly, the Credit Application; and
- (c) thirdly, the relevant Purchase Order.

3. Quotation

3.1 As all products the Seller orders are exclusive and specific for each job, the acceptance of the Seller's quotation is defined as an order and request by the Client to commence services and supply of Goods.

3.2 Once a quotation has been issued, it remains valid for 30 days unless withdrawn by the Seller, after which a revised quotation may be necessary. Any variation to quantities or requested services may result in a variation to the quotation and the quoted price.

3.3 By signing the Quotation and/or delivery docket, the Client acknowledges that the order is accepted and that the Client has read and understood the Terms and Conditions of Trade and has agreed to the Terms and Conditions of Trade contained in this Agreement.

4. Price and Payment

4.1 The Price shall be as indicated on invoices provided by the Seller to the Client in respect of the Goods supplied.

4.2 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation, or any other order forms. If no time is stated, then payment will be due seven (7) days following the date of the invoice.

4.3 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Default and Consequences of Default

5.1 If the Client fails to make a payment when due, the Client will pay to the Seller interest on overdue invoices which shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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

5.3 Further to any other rights or remedies the Seller may have under this contract, if a Client has made payment to the Seller by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 5 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.

6. Disputes

6.1 Any Disputes in relation to the Goods must be communicated to the Seller in writing within 24 hours of Delivery. In the event that no communication is received by the Seller within the 24-hour period, the Goods are deemed to be accepted by the Client.

6.2 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.

6.3 If a dispute arises relating to this Agreement, the parties agree to negotiate to settle the dispute before litigation.

7. Delivery

7.1 The Seller will ensure that all Goods are suitably packed (for transit and storage), clearly marked and delivered at the delivery destination stated in the Agreement or otherwise in accordance with the reasonable instructions given by the Client.

7.2 The Seller will at all times endeavour to deliver the Goods ordered for specified dates but cannot and will not be held responsible or liable for material shortages supplied by others and/or delays for deliveries or materials. Failure to meet delivery deadlines cannot be constituted as a breach of the Agreement and will not enable a cancellation of the order by the Client or allow any claim for delay, compensation, or damages to be sought from the Seller.

7.3 The delivery times made known to the Client are estimates only. The Seller is not liable for any loss, damage or delay occasioned to the Client or its customers arising out of late or non-delivery.

7.4 Upon delivery of the Goods, any dispute relating to the Goods or in accordance with the quotation must be raised within 48 hours of delivery by notifying the Seller. The Seller may, at the Seller's discretion, offer a credit for the Goods.

8. Risk

8.1 Risk in any Goods to be supplied to the Client passes to the Client immediately upon the earlier of:

- (a) the Seller's notification that those Goods are available for collection; or
- (b) upon delivery to the delivery address advised by the Client, whether or not the Client collects the Goods or refuses delivery.

8.2 The Client must insure the Goods on or before Delivery.

8.3 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms and Conditions of Trade by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

9. Title to Goods (including any incidental items supplied as part of any Services)

9.1 The Seller and the Client agree that ownership of the Goods shall not pass until:

- (a) the Client has paid the Seller all amounts owing to the Seller; and
- (b) the Client has met all its other obligations to the Seller.

9.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

9.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Client in accordance with clause 9, that the Client is only a bailee of the Goods and must return the Goods to the Seller on request.
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand.
- (d) the Client irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods.
- (e) the Seller may recover possession of any Goods in transit whether or not delivery has occurred.
- (f) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller.
- (g) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

10. Termination

10.1 **Withdrawal of a Purchase Order:** The Client may cancel a Purchase Order at any time with 14 days' notice, but not if at that time the Seller has committed substantive resources to fulfil the Purchase Order or has acquired or irrevocably committed to acquire substantive inputs for a third party to fulfil the Purchase Order.

10.2 **Termination for convenience:** either party may terminate the Agreement in whole or in part for any reason at any time by providing 10 business days' notice to the other party.

10.3 **Termination for cause:** either party may terminate the Agreement in whole or in part with immediate effect if the other party:

- (a) breaches a material provision of the Agreement and the breach is incapable of remedy;
- (b) breaches a material provision of the Agreement and fails to remedy it within 5 days of receiving a notice detailing the breach and requesting that it be rectified; or
- (c) has a change in control or management which the other party reasonably considers may result in harm to its property, goodwill or reputation.

10.4 **Effect of Termination:** upon termination of the Agreement:

- (a) the Client will pay the Seller for Good and/or Services accepted in accordance with the Agreement;
- (b) if a party terminates for convenience under clause 10.2 above, that party must pay for any reasonable costs that the other party incurs that are directly attributable to the termination or reduction, provided that the party substantiates these costs; and
- (c) where the Client has made payment in advance to the Seller for Goods and/or Services not yet delivered or supplied to the Client, the total of that payment must be repaid by the Seller to the Client within 14 days of termination.

10.5 Any termination of this agreement will not affect any accrued rights or remedies of either party.

Bravo Foods Pty Ltd - Terms & Conditions of Trade

- 11. Personal Property Securities Act 2009 ("PPSA")**
- 11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2 Upon assenting to these Terms and Conditions of Trade in writing the Client acknowledges and agrees that these Terms and Conditions of Trade constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to the Seller for Services – that have previously been supplied and that will be supplied in the future by the Seller to the Client.
- 11.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to;
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of the Seller;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Seller;
- (e) immediately advise the Seller of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 11.4 The Seller and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 11.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by the Seller, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Client must unconditionally ratify any actions taken by the Seller under clauses 11.3 to 11.5.
- 11.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 12. Security and Charge**
- 12.1 In consideration of the Seller agreeing to supply the Goods, the Client and its shareholders and Directors agree to charge all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client and its shareholders and Directors either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Client and its shareholders and Directors indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
- 12.3 The Client and its shareholders and Directors irrevocably appoints the Seller and each director of the Seller as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.
- 13. Guarantee**
- 13.1 The Guarantor unconditionally guarantees to the Seller:
- (a) the due and punctual payment by the Client of:
- (i) all moneys due and payable from time to time or to become due and payable from time to time, to the Seller by the Client with regard to or in connection with these Terms and Conditions of Trade and/or the quotation; and
- (ii) all other moneys which the Client either alone, jointly, severally, or jointly and severally with any other person, now or from time to time is, or becomes actually or contingently liable to pay to the Seller with regard to or in connection with these Terms and Conditions of Trade and/or the quotation; and
- (b) the due and punctual observance and performance by the Client of all its other liabilities, obligations and agreements (whether monetary or non-monetary, present or future, actual or contingent) to the Client pursuant to or in connection with these Terms and Conditions of Trade and/or the quotation.
- 14. Indemnity**
- 14.1 The Client and its shareholders and Directors indemnifies and keeps indemnified the Seller, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Client) against the Seller or, for which the Seller is liable, in connection with any Loss arising from or incidental to the provision of Goods or Services, any Order or the subject matter of these terms of trade.
- 14.2 This includes, but is not limited to, any legal costs incurred by the Seller in relation to meeting any claim or demand or any party/party legal costs for which the Seller is liable in connection with any such claim or demand.
- 14.3 This provision remains in force after the termination of these Terms and Conditions of Trade.
- 15. Privacy Act 1988**
- 15.1 The Client agrees for the Seller to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Seller.
- 15.2 The Client agrees that the Seller may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 15.3 The Client consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit.
- 15.4 The Client agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
- (b) analysing, verifying and/or checking the Client'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 Client; and/or
- (d) enabling the collection of amounts outstanding in relation to the Goods.
- 15.5 The Seller may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 15.6 The information given to the CRB may include:
- (a) personal information as outlined in 15.1 above;
- (b) name of the credit provider and that the Seller is a current credit provider to the Client;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (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 Client no longer has any overdue accounts and the Seller has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of the Seller, the Client has committed a serious credit infringement;
- (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 15.7 The Client shall have the right to request (by e-mail) from the Seller:
- (a) a copy of the information about the Client retained by the Seller and the right to request that the Seller correct any incorrect information; and
- (b) that the Seller does not disclose any personal information about the Client for the purpose of direct marketing.
- 15.8 The Seller will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 15.9 The Client can make a privacy complaint by contacting the Seller via e-mail. The Seller will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 16. General**
- 16.1 The failure by either party to enforce any provision of these Terms and Conditions of Trade 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 of Trade shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These Terms and Conditions of Trade and any contract to which they apply shall be governed by the laws of the state in which the Seller has its principal place of business and are subject to the jurisdiction of the courts in that state.
- 16.3 Where applicable nothing in this agreement is intended to have the effect of contracting out of the Competition and Consumer Act 2010 (CCA). The Seller shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Seller of these Terms and Conditions of Trade (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 16.4 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.
- 16.5 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.