

1. Definitions

- 1.1 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting MC to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.2 **"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.
- 1.3 **"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.
- 1.4 **"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 Client does not wish to allow Cookies to operate in the background when using MC's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.5 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.6 **"MC"** means Marine Creations Pty Ltd ATF Beko Enterprises Trust T/A Marine Creations Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Marine Creations Pty Ltd ATF Beko Enterprises Trust T/A Marine Creations Pty Ltd.
- 1.7 **"Parts"** shall mean Parts supplied by MC to the Client either separately, or as part of the Works (and where the context so permits shall include the provision of Works as defined above).
- 1.8 **"Price"** means the Price payable (plus any GST where applicable) for the Works as agreed between MC and the Client in accordance with clause 5 below.
- 1.9 **"Vessel"** shall mean any vehicle of the Client expressly used for water travel and/or recreation, and described in any documentation supplied by the Client to MC.
- 1.10 **"Works"** means all Works (including consultation, manufacturing and/or installation services) or Parts supplied by MC to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Parts' shall be interchangeable for the other).

2. Acceptance

- 2.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Works.
- 2.2 These terms and conditions may be meant to be read in conjunction with MC's Consignment Form.
- 2.3 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.
- 2.4 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.5 The Client acknowledges and accepts that the supply of Works on credit shall not take effect until the Client has completed a credit application with MC and it has been approved with a credit limit established for the account.
- 2.6 In the event that the supply of Works requested exceeds the Client's credit limit and/or the account exceeds the payment terms, MC reserves the right to refuse delivery.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) 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 Client acknowledges and accepts that MC 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 MC 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 MC in respect of the Works.
- 3.2 In circumstances where the Client is required to place an order for Parts, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Parts (whether they are made to order Parts or not) ("**Client Error**"). The Client must pay for all Parts it orders from MC notwithstanding that such Parts suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take delivery of such Parts. MC is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

4. Change in Control

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

5. Price and Payment

- 5.1 At MC's sole discretion, the Price shall be either:
- (a) as indicated on invoices provided by MC to the Client in respect of Works performed or upon placement of an order for the Parts; or
 - (b) MC's estimated Price (subject to clause 6) which shall not be deemed binding upon MC as the actual Price can only be determined upon completion of the Works. MC undertakes to keep the Client informed should the actual Price look likely to exceed the original estimate; or
 - (c) MC's quoted Price (subject to clause 6) which shall be binding upon MC provided that the Client shall accept MC's quotation in writing within seven (7) days.
- 5.2 At MC's sole discretion, a reasonable non-refundable deposit may be required upon placement of an order for Parts/Works, in accordance with any quotation provided by MC or as notified to the Client prior to the placement of an order for Parts/Works.
- 5.3 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by MC, which may be:
- (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with MC's specified payment schedule; or
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by MC.
- 5.4 Payment may be made by cash, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and MC.
- 5.5 MC may in its discretion allocate any payment received from the Client towards any invoice that MC determines and may do so at the time of receipt or at any time afterwards. On any default by the Client MC may re-allocate any payments previously received and allocated. In the absence of any payment allocation by MC, payment will be deemed to be allocated in such manner as preserves the maximum value of MC's Purchase Money Security Interest (as defined in the PPSA) in the Parts.
- 5.6 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 MC nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify MC in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as MC investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in MC placing the Client's account into default and subject to default interest in accordance with clause 13.1.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to MC an amount equal to any GST MC must pay for any supply by MC under this or any other Contract for the sale of the Parts. 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.
- 5.8 Receipt by MC 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.

6. Additional Charges

- 6.1 MC reserves the right to change the Price:
- (a) if a variation to the Works which are to be provided is requested; or
 - (b) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, further faults which are found upon disassembly and/or further inspection) which are only discovered upon commencement or during the course of the Works; or
 - (c) in the event of increases to MC in the cost of labour or Parts, or fluctuations in currency exchange rates, which are beyond MC's control.
- 6.2 Variations will be charged for on the basis of MC's quotation, and will be detailed in writing, and shown as variations on MC's invoice. The Client shall be required to respond to any variation submitted by MC within ten (10) working days. Failure to do so will entitle MC 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 All tow and/or salvage fees will be charged to the Client and will be added to the Price.
- 6.4 If MC has been requested by the Client to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.
- 6.5 The Client acknowledges and agrees that MC shall be entitled to:
- (a) retain any components replaced during the provision of the Works; and
 - (b) the right to retain all proceeds obtained from the sale of such components to any auto recycler or salvage yard.

7. Provision of the Works

- 7.1 Where MC is to provide any Works at the Client's nominated address, then the Client shall be liable for:
- (a) all costs incurred by MC from the time they depart from, and until they return to, their normal place of work (including, but not limited to, mileage and time calculated at MC's standard rates and any Parts purchased for the Works); and
 - (b) a minimum call-out fee, which shall be increased for any after-hours call-outs.
- 7.2 MC may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.3 Any time specified by MC for provision of the Works is an estimate only and MC will not be liable for any loss or damage incurred by the Client as a result of any delay. However, both parties agree that they shall make every endeavour to enable the Works to be provided at the time and place as was arranged between both parties. In the event that MC is unable to provide the Works as agreed solely due to any action or inaction of the Client then MC shall be entitled to charge a reasonable fee for re-providing the Works at a later time and date. If provision of the Works is delayed as a consequence of the Client's instructions, or lack thereof, then MC may after two (2) days execute their right to store the Parts and/or Vessel, and the Client shall be liable to pay for all storage costs charged or incurred by MC and, in the event that the Parts and/or Vessel are stored elsewhere, all cartage costs incurred by MC. Notwithstanding this clause 7.3, the failure of the Client to take possession of the Parts and/or Vessel after a period of thirty (30) days will result in MC enforcing their rights to execute the sale of the Parts and/or Vessel pursuant to clause 17.
- 7.4 Notwithstanding any remedies available under the CCA, MC shall not be liable for any loss of income or other monetary gains where the Vessel is inoperable due to the delay or non-arrival of any outside sourced components that are beyond the control of MC.

8. Risk

- 8.1 If MC retains ownership of the Parts under clause 9 then where MC is supplying Parts only, all risk for the Parts shall immediately pass to the Client on delivery and the Client must insure the Parts on or before delivery. The cost of delivery will be payable by the Client in accordance with the quotation provided by MC to the Client, or as otherwise notified to the Client prior to the placement of an order for the Parts. Delivery of the Parts shall be deemed to have taken place immediately at the time that the Parts are delivered by MC or MC's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address). If the Client requests MC to deliver the Parts and/or Vessel to an unattended location, then such Parts and/or Vessel shall be left at the Client's sole risk. If any of the Parts and/or Vessel are damaged or destroyed following delivery and/or completion of the Works, but prior to ownership passing to the Client, MC is entitled to receive all insurance proceeds payable for the Parts and/or Works. The production of these terms and conditions by MC is sufficient evidence of MC's rights to receive the insurance proceeds without the need for any person dealing with MC to make further enquiries.
- 8.2 In the event that Parts and/or Vessel are held by MC (for repair or otherwise), MC undertakes to maintain a reasonable duty of care towards the Parts and/or Vessel but risk (including, but not limited to, insurance risk) in the Parts and/or Vessel remains with the Client, notwithstanding that property in the Parts may remain with MC under clause 9.1. Under no circumstances shall the liability of MC, for Parts and/or Vessel held by MC, exceed the fair market thereof. It is the Client's responsibility to ensure that the Vessel is insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored at MC's premises. The Vessel is at all times stored and repaired at the Client's sole risk. MC shall not be liable for the loss of or damage to the Vessel, its accessories or contents while being serviced or operated in connection with the authorised Works (including in the event of a call-out; it shall be the Client's responsibility to remain with the Vessel to ensure security of the same), unless caused by the negligence of MC or MC's employees.
- 8.3 The Client acknowledges and accepts that MC:
- (a) is only responsible for Parts that are replaced by MC and does not at any stage accept any liability in respect of previous services and/or components supplied by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to indemnify MC against any loss or damage to the Vessel, Parts, or caused by the components, or any part thereof howsoever arising;
 - (b) or its employees may test drive or carry out tests on the Vessel (at MC's discretion), or (where required) tow the Vessel either on water or road or may be requested by the Client to collect or re-deliver the Vessel. MC will not be liable for (and the Client indemnifies MC against) any damages caused to, or by, the Vessel during such tests, towing, collection or delivery unless it arises from the recklessness or wilful misconduct of MC or its employees; and
 - (c) shall not accept liability for any damage or loss including personal injury or death in the event that the Client chooses to install Parts that subsequently prove to be insufficient for the purposes that the Client desired to achieve, particularly where this is against any recommendation of MC.

9. Title

- 9.1 The Client acknowledges and agrees that the Client's obligations to MC for the provision of Works shall not cease, and subsequent ownership of the Parts shall not pass until:
- (a) the Client has paid MC all amounts owing to MC for the Works; and
 - (b) the Client has met all other obligations due by the Client to MC in respect of all Contracts between MC and the Client.
- 9.2 It is further agreed that until ownership of the Parts passes to the Client in accordance with clause 9.1:
- (a) the Client is only a bailee of the Parts and unless the Parts have become fixtures must return the Parts to MC on request;
 - (b) the Client holds the benefit of the Client's insurance of the Parts on trust for MC and must pay to MC the proceeds of any insurance in the event of the Parts being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Parts other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Parts then the Client must hold the proceeds of any such act on trust for MC and must pay or deliver the proceeds to MC on demand;
 - (d) the Client should not convert or process the Parts or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of MC and must sell, dispose of or return the resulting product to MC as it so directs;
 - (e) unless the Parts have become fixtures the Client irrevocably authorises MC to enter any premises where MC believes the Parts are kept and recover possession of the Parts;
 - (f) MC may recover possession of any Parts in transit whether or not delivery has occurred;
 - (g) the Client shall not charge or grant an encumbrance over the Parts nor grant nor otherwise give away any interest in the Parts while they remain the property of MC; and
 - (h) MC may commence proceedings to recover the Price of the Parts sold notwithstanding that ownership of the Parts has not passed to the Client.

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

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Parts and/or collateral (account) – being a monetary obligation of the Client to MC for Works – that have previously been supplied and that will be supplied in the future by MC to the Client.
- 10.3 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 MC 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 10.3(a)(i) or 10.3(a)(ii).
 - (b) indemnify, and upon demand reimburse, MC 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 Parts charged thereby;

- (c) not register a financing change statement in respect of a security interest without the prior written consent of MC;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Parts and/or collateral (account) in favour of a third party without the prior written consent of MC; and
 - (e) immediately advise MC of any material change in its business practices of selling the Parts which would result in a change in the nature of proceeds derived from such sales.
- 10.4 MC 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.
- 10.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by MC, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Client shall unconditionally ratify any actions taken by MC under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary (including those contained in this clause 10), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

11. Security and Charge

- 11.1 In consideration of MC agreeing to supply the Parts and/or provide its Works, the Client grants MC a security interest by way of a floating charge (registerable by MC pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Parts and/or Works under this Contract and/or permit MC to appoint a receiver to the Client in accordance with the *Corporations Act 2001* (Cth).
- 11.2 The Client indemnifies MC from and against all MC's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising MC's rights under this clause.
- 11.3 In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 9.1, 10.2 and 11.1 as applicable, is deemed insufficient by MC to secure the repayment of monies owed by the Client to MC, the Client hereby grants MC a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

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

- 12.1 The Client must inspect the Works on completion (or Parts on delivery) and must within seven (7) days of delivery notify MC in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Parts/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow MC to inspect the Parts or to review the Works provided.
- 12.2 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**).
- 12.3 MC acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, MC makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Parts/Works. MC's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Client is a consumer within the meaning of the CCA, MC's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If MC is required to replace any Parts under this clause or the CCA, but is unable to do so, MC may refund any money the Client has paid for the Parts.
- 12.7 If MC is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then MC may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Parts which have been provided to the Client which were not defective.
- 12.8 If the Client is not a consumer within the meaning of the CCA, MC's liability for any defect or damage in the Parts is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by MC at MC's sole discretion;
 - (b) limited to any warranty to which MC is entitled, if MC did not manufacture the Parts; and/or
 - (c) otherwise negated absolutely.
- 12.9 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 12.1; and
 - (b) MC has agreed that the Parts are defective; and
 - (c) the Parts are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Parts are returned in as close a condition to that in which they were delivered as is possible.
- 12.10 Notwithstanding clauses 12.1 to 12.9 but subject to the CCA, MC shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Parts and/or Vessel;
 - (b) the Client using the Parts and/or Vessel for any purpose other than that for which they were designed;
 - (c) the Client continuing to use any Parts and/or Vessel after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Works by the Client or any third party without MC's prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by MC; and/or
 - (f) fair wear and tear, any accident, or act of God.
- 12.11 In the case of second-hand Parts, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second-hand Parts prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by

MC as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that MC has agreed to provide the Client with the second-hand Parts and calculated the Price of the second-hand Parts in reliance of this clause 12.11.

- 12.12 MC may in its absolute discretion accept non-defective Parts for return in which case MC may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Parts plus any freight costs.
- 12.13 Notwithstanding anything contained in this clause if MC is required by a law to accept a return then MC will only accept a return on the conditions imposed by that law.

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 MC's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Client owes MC any money, the Client shall indemnify MC from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Client would be liable;
- in regard to legal costs on a solicitor and own client basis incurred in exercising MC's rights under these terms and conditions, internal administration fees, MC's Contract fees owing for breach of these terms and conditions, including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 13.3 Further to any other rights or remedies MC may have under this Contract, if a Client has made payment to MC, 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 MC under this clause 13 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 13.4 Without prejudice to MC's other remedies at law MC shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to MC shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to MC becomes overdue, or in MC's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by MC;
 - (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

14. Cancellation

- 14.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("**the Breaching Party**") the other party may suspend or terminate the supply or purchase of Parts and/or Works to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 14.2 If MC, due to reasons beyond MC's reasonable control, is unable to deliver any Parts and/or Works to the Client, MC may cancel any Contract to which these terms and conditions apply or cancel delivery of Parts and/or Works at any time before the Parts and/or Works are delivered by giving written notice to the Client. On giving such notice MC shall repay to the Client any money paid by the Client for the Parts and/or Works. MC shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.3 The Client may cancel delivery of the Parts and/or Works by written notice served within forty-eight (48) hours of placement of the order. If the Client cancels delivery in accordance with this clause 14.3, the Client will not be liable for the payment of any costs of MC, except where a deposit is payable in accordance with clause 5.2. However, cancellation of orders for products made to the Client'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 MC is Personal Information, as defined and referred to in clause 15.3, and therefore considered Confidential Information. MC 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"). MC acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by MC that may result in serious harm to the Client, MC will notify the Client 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 Client by written consent, unless subject to an operation of law.
- 15.2 Notwithstanding clause 15.1, privacy limitations will extend to MC in respect of Cookies where the Client utilises MC's website to make enquiries. MC 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 Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to MC when MC sends an email to the Client, so MC may collect and review that information ("collectively Personal Information").
- If the Client consents to MC's use of Cookies on MC's website and later wishes to withdraw that consent, the Client may manage and control MC's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 15.3 The Client agrees for MC 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

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- of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by MC.
- 15.4 The Client agrees that MC 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 (2) years.
- 15.5 The Client consents to MC being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 15.6 The Client agrees that personal credit information provided may be used and retained by MC for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; 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 Works.
- 15.7 MC may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report; and/or
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 15.8 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 MC 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 (provided MC is a member of an approved OAIC External Disputes Resolution Scheme), 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 MC has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of MC, the Client has committed a serious credit infringement; and/or
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 15.9 The Client shall have the right to request (by e-mail) from MC:
- (a) a copy of the Personal Information about the Client retained by MC and the right to request that MC correct any incorrect Personal Information; and
 - (b) that MC does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 15.10 MC will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 15.11 The Client can make a privacy complaint by contacting MC via e-mail. MC 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. Compliance with Laws**
- 16.1 The Client and MC shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Parts/Works.
- 17. Unpaid Seller's Rights**
- 17.1 Where the Client has left any item with MC for repair, modification, exchange or for MC to perform any other service in relation to the item and MC has not received or been tendered the whole of any monies owing to it by the Client, MC shall have, until all monies owing to MC are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 17.2 The lien of MC shall continue despite the commencement of proceedings, or judgment for any monies owing to MC having been obtained against the Client.
- 18. Service of Notices**
- 18.1 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; or
 - (e) if sent by email to the other party's last known email address.
- 18.2 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.

19. Trusts

- 19.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not MC may have notice of the Trust, the Client covenants with MC as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund. The Client 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 Client will not during the term of the Contract without consent in writing of MC (MC will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.

20. General

- 20.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 20.2 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, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts in that state. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).
- 20.4 MC may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- 20.5 The Client cannot licence or assign without the written approval of MC.
- 20.6 MC may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of MC's sub-contractors without the authority of MC.
- 20.7 The Client agrees that MC may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for MC to provide Works to the Client.
- 20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to MC, once the parties agree that the Force Majeure event has ceased.
- 20.9 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.
- 20.10 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
- 20.11 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.