

TERMS AND CONDITIONS OF TRADE

1. Interpretation

- 1.1 Unless otherwise inconsistent with the context the word "person" shall also mean corporation;
- 1.2 Words importing the singular number shall be deemed to include the plural and vice versa.
- 1.3 Words importing the male gender shall be deemed to include the female and neutral gender and vice versa.
- 1.4 "Contractor" shall mean **Scots Ice Australia Pty Ltd** its successors and assigns.
- 1.5 "Client" shall mean the Client named and described in the Credit Account Application.
- 1.6 "Goods and/or Services" shall include, depending on the context, Goods and/or Services, products, materials and services supplied and/or provided by the Contractor.
- 1.7 "accession" has the meaning given by s.10 of the Personal Property Securities Act 2009 ("PPSA").
- 1.8 "PMSI" has the meaning of the term "Purchase Money Security Interest" in the PPSA.
- 1.9 "PPS Register" has the meaning in clause 6.4 (c).
- 1.10 "price" means the price of the Goods and/or Services listed in any quotation given by the Contractor, or listed in any agreement between the Contractor and Client, or listed in any price list published by the Contractor or orally advised by a representative of the Contractor. If the price is listed in more than one source then the price listed in the any written source shall prevail over an oral source or the latest written source shall prevail where there are multiple written sources.
- 1.11 "proceeds" has the meaning given by s.31 of the PPSA.
- 1.12 "Security Interest" has the meaning given by s.12 of the PPSA.
- 1.13 "Contractors Security Interest" has the meaning defined in clause 6.4 (a)-(c).
- 1.14 "Supply" means the supply of Goods and/or Services under these Terms and Conditions of Trade.

2. Quotations, orders and agreement

- 2.1 A written quotation issued by the Contractor to the Client is an offer to sell and overrides the Contractor's prevailing price list, if any. A written quotation expires on the date specified as an expiry date. If no expiry date is specified, the written quotation expires 30 days after the date of the written quotation.
- 2.2 The Contractor may withdraw, revoke or vary a written quotation at any time prior to the Client submitting an order which accepts the offer to sell comprised by the written quotation.
- 2.3 The price quoted is subject to the Client ordering all of the Goods and/or Services described in the quotation. If the Client does not order all of the Goods and/or Services described in the quotation then the Contractor reserves the right to revise the pricing of the Goods and/or Services ordered, and the Client shall pay the revised price as invoiced by the Contractor.
- 2.4 An agreement for the sale of the Goods and/or Services, subject to these Terms and Conditions of Trade, is made when the Client communicates (by writing or conduct) to the Contractor its acceptance of a written quotation or orders the Goods and/or Services or accepts the supply of the Goods and/or Services.
- 2.5 The price of the Goods and/or Services in the agreement may be increased or changed by the Contractor if:
 - (a) supply of the quoted Goods and/or Services does not start within 30 days after acceptance of the quotation,
 - (b) supply under the agreement is stopped or suspended for more than 30 days,
 - (c) supply under the agreement is changed in any way before, during or after commencement of supply, including but not limited to re-design of the project, the start date of supply, the completion date of supply and the agreed rate of supply, or
 - (d) supply under the agreement has not been completed within 12 months of the date of the quotation.
- 2.6 Where in the period between acceptance of the quotation and delivery of the Goods and/or Services, the Contractor incurs an increase in the cost of producing and/or delivering the Goods and/or Services, the Contractor may increase the quoted price of those Goods and/or Services at any time prior to delivery.
- 2.7 Unless otherwise agreed in writing the price of Goods and/or Services ordered by the Client is the price applying at the time of despatch. Any price indications or price lists are subject to change at any time.
- 2.8 These terms and conditions shall be deemed to be incorporated into any agreement between the Contractor and the Client. Any terms and conditions contained in any order, offer, acceptance or other document of the Client and all representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law.
- 2.9 The agreement herein constitutes the entire agreement between the Contractor and the Client, and all prior negotiations, proposals and correspondence are superseded by this agreement.
- 2.10 Unless agreed otherwise in writing, the Contractor may, by written notice, terminate the agreement constituted by the acceptance of any quotation 12 months after the date of the first delivery of the Goods and/or Services.
- 2.11 In the event that the price for the supply of the Goods and/or Services, whether in full or in part, will cause the Client to exceed its approved credit limit then the Contractor may withhold supply until the moneys due on the credit account, including the price for the Goods and/or Services the subject of this clause, will be less than the credit limit.

3. Delivery

- 3.1 Any date quoted for delivery is an estimate only.
- 3.2 The Contractor reserves the right to deliver by instalments and if delivery is made by instalments the Client shall not be entitled to terminate or cancel the agreement.
- 3.3 The Contractor may cancel the order if it determines that it will be unable to deliver the Goods and/or Services within a reasonable time.
- 3.4 For Special orders and projects of non-stocked items, the Client shall take delivery of the Goods and/or Services within 7 days of notification from the Contractor that the Goods and/or Services are ready for delivery.
- 3.5 Where the Client does not accept delivery of Goods and/or Services when the Goods and/or Services are ready for delivery by the Contractor, the Client shall be liable for additional charges at the Contractor's current rates for storage and/or double handling or if there is no current rate then at a rate determined by the Contractor in its absolute discretion.
- 3.6 Any quotation containing a provision to supply Goods and/or Services "ex stock" is subject to fulfilment of prior orders at the date of receipt of the Client's order.
- 3.7 If the Contractor quotes the price as "ex-factory" the Client shall take delivery of the Goods and/or Services at the premises of the Contractor.
- 3.8 The Client bears the sole responsibility for and the risk of unloading the Goods and/or Services.
- 3.9 The Contractor, its officers, employees and agents shall not be liable to the Client or any other party for any loss or damage including direct or indirect or consequential injury loss or damage whatsoever by reason of any delay in delivery or non-delivery whether the same is due to the negligence of the Contractor or any other party, actions constituting fundamental breach of contract, strike or any other industrial action, or any other cause whatsoever.

4. Price and Payment

- 4.1 Unless otherwise agreed in writing payment terms are pre-payment prior to dispatch. Payment is effected upon clearance of the funds in the nominated bank account.
- 4.2 In addition to the provisions of clause 2 the Contractor may increase the price of Goods and/or Services where it incurs an increase in its costs of supplying the Goods and/or Services.
- 4.3 The Contractor may apply any monies paid to it by the Client in such manner and at such times as the Contractor, in its absolute discretion, determines.

4.4 Amounts due to the Contractor by the Client must be paid without deduction, retention or set-off of any kind and for any reason.

5. Title and Personal Property Securities Act 2009

- 5.1 Notwithstanding the delivery of the Goods and/or Services or part thereof the Goods and/or Services remain the sole and absolute property of the Contractor as full legal and equitable owner until such time as the Client shall have paid the Contractor the full purchase price together with the full price of any other Goods and/or Services the subject of any other agreement with the Contractor.
- 5.2 The Client acknowledges that it receives possession of and holds Goods and/or Services delivered by the Contractor solely as bailee for the Contractor until such time as the full price thereof is paid to the Contractor together with the full price of any other Goods and/or Services then the subject of any other agreement with the Contractor and that a fiduciary relationship exists between the Contractor and the Client.
- 5.3 Until such time as the Client becomes the owner of the Goods and/or Services, it will;
 - (a) store them on the premises separately;
 - (b) ensure that the Goods and/or Services are kept in good and serviceable condition;
 - (c) secure the Goods and/or Services from risk, damage and theft; and
 - (d) keep the Goods and/or Services fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of the Client.
 - (e) if the Goods and/or Services are processed or commingled with or made an accession to other Goods and/or Services by the Client, the Client shall record and make available to the Contractor on request the record of the date of the processing, or commingling or accession and hold the product, or mass or whole in a way that clearly indicates the Contractor's title to the product, or mass or whole.
 - (f) the Client shall not deal with the Goods and/or Services, either in their original state or as part of a product, mass or whole, for a consideration of less value than the amount necessary to discharge the Client's liability to the Contractor in full for or in relation to the Goods and/or Services and shall retain the consideration or other proceeds of the Goods and/or Services separate from all other property of the Client and in a manner, which clearly identifies it as such consideration or other proceeds of the Goods and/or Services, product, mass or whole (unless otherwise agreed in writing by the Contractor).
- 5.4 By accepting the Supply the Client agrees that:
 - (a) a Security Interest is created in favour of the Contractor within the meaning of the PPSA in:
 - (i) the Goods and/or Services;
 - (ii) the proceeds of sale of the Goods and/or Services;
 - (iii) any other property, to which the Goods and/or Services become an accession or with which they are commingled;
 - (iv) any product or mass, of which the Goods and/or Services become a part by manufacture, process, assembly or commingling.
 - (b) the Security Interest secures:
 - (i) the Client's obligation to pay for the Goods and/or Services, and
 - (ii) any and all other obligations of the Client to pay money or money's worth (including costs, expenses, damages or losses) for the benefit of the Contractor now or in the future or from time to time under this agreement.
 - (c) to the extent the Contractor's Security Interest secures the Client's obligation to pay for any of the Goods and/or Services, it constitutes as a PMSI;
- 5.5 With respect to the Contractor's Security Interest while it is retained by the Contractor, the Client:
 - (a) will when called upon by the Contractor sign any further documents or provide any further information which the Contractor may reasonably require to register a financing statement or financing change statement on the Personal Properties Security Register ("PPS Register"), or in connection with the issue of a verification statement;
 - (b) will not register or apply to register a financing statement or financing change statement which is in any way connected with the Goods and/or Services (or any accession, mass or product, of which they form part) without the Contractor's prior written consent, which may be given or withheld at the Contractor's absolute discretion;
 - (c) will pay any costs or, expenses or losses incurred by the Contractor and keep the Contractor indemnified against any loss, damage or liability to third parties incurred in relation to:
 - (i) registering or seeking the release of any document relating to the Contractor's Security Interest on the PPS Register; or
 - (ii) enforcing the Contractor's security Interest (including its legal costs, on a solicitor-client basis);
 - (d) will give the Contractor at least 14 days written notice of any proposed change in its name, contact details, place of incorporation, address, location, nature of business, ownership, or business practice; and
 - (e) it irrevocably appoints the Contractor to be the Client's attorney to do anything which the Client agrees to do under these Terms and Conditions and anything which the attorney thinks desirable to protect the Contractor's Security Interest and the Client will take all steps required to ratify anything done by the attorney under this clause.
- 5.6 To the extent permitted by law, the Client waives its right to notices as a grantor under section 157 of the PPSA; acknowledging, that the collateral, subject of the Contractor's Security Interest is properly described as commercial property. To the extent that they impose any obligation on the Contractor or grant any right to the Client and section 115(1) of the PPSA allows them to be excluded: sections 95, 118, 121(4), 125, 130, 132 (3), 132 (4), 135, 142, and 143 of the PPSA do not apply to this agreement or the Contractor's security interest in the Goods and/or Services. To 5.7 the extent, that Part 4.3 of the PPSA imposes any obligation on the Contractor or grants any right to the Client and s.115(7) permits, its application pursuant to s.116(2) is excluded.
- 5.8 Notwithstanding the payment by the Client of part or all of the price relating to the Goods and/or Services, any proceeds or other property in which the Contractor's Security Interest will continue to exist in the Goods and/or Services, any Proceeds of the Goods and/or Services or other property, in which the Contractor's Security Interest may apply (by operation of operation of these Terms and Conditions or statute) until the Contractor's Security Interest is discharged in writing by the Contractor.
- 5.9 The Client will not do, or omit to do, nor allow to be done or omitted to be done, anything which might adversely affect the Contractor's Security Interest.
- 5.10 If the Client sells the Goods and/or Services, either in their original state or as part of a product, mass or whole to its Clients, the Client, in its position as a fiduciary, assigns to the Contractor and authorises the Contractor to sue in its name to recover the benefit of any claim against its Clients for the price of the Goods and/or Services, the product, mass or whole, and, in addition to its obligations under the PPSA, it shall hold on trust for the Contractor and account to the Contractor for the consideration and all proceeds received in relation to the Goods and/or Services, product, mass or whole.
- 5.11 This clause shall apply even though the Contractor may give credit to the Client.
- 5.12 Without limiting the rights or remedies available to the Contractor under these Terms and Conditions, statute (including under the PPSA) or other law, if the Client;
 - (a) (being a natural person) commits an act of bankruptcy;
 - (b) (being a corporation) does anything which entitles anyone to apply to wind up the Client or is subject to the appointment of an administrator or liquidator or receiver or controller or receiver and manager; or
 - (c) breaches any of these "Terms and Conditions", (each of which is hereafter referred to as 'an act of default'), the Contractor may take possession of and retain, resell or otherwise dispose of the Goods and/or Services or any product, mass or whole, of which they form part.
- 5.13 To the extent permitted by law, in the event of any such act of default, the Client authorises the Contractor to enter premises where the Goods and/or Services may be located to take possession of the Goods and/or Services or any product, mass or whole, of which they form part without notice to the Client. The Client shall indemnify the Contractor against all claims arising out of the entry by the Contractor into premises to take possession of the Goods and/or Services or any product, mass or whole, of which they form part.

6. Risk

6.1 The Client warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and the Contractor shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation (including but not limited to insufficient or defective foundations, walls or other structures not erected by the Contractor).

6.2 The Client acknowledges that:

- (a) stainless steel is a textured material and can be of a porous nature. The Client accepts that products made from this material can rust and mark easily. The Client accepts that care should be taken to maintain the finish of and longevity of stainless steel products;
- (b) where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims used due to the difference in aluminium alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Materials.

6.3 The Client acknowledges and agrees that routine cleaning will prolong the original appearance of the stainless steel and provides maximum corrosion resistance when it is cleaned regularly. The Client further agrees that crevice corrosion (tea staining) may occur if dirt, grime and surface stains containing corrosive substances are left on the stainless steel surface. The frequency of cleaning required will depend on aesthetic requirements, severity of the environment, suitability of the stainless steel grade and surface finish for that particular environment, the presence or lack of heavy rains to clean the surface, and the design of the stainless steel.

6.4 The Contractor shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever where the Contractor accepts no liability for any loss or damage direct or indirect of or to any person or property arising from the installation or operation of Goods and/or Services including consequential loss or damage arising from any circumstances whatsoever, except under a Non-excludable Condition.

7. Warranties

7.1 The Client agrees to check all Goods and/or Services received immediately upon delivery and all services immediately upon completion. The Client will not be entitled make any claim after the expiry of five (5) days from the date of delivery of the Goods and/or Services or the completion of the provision of services, for shortages or improper or defective or damaged Goods and/or Services or defective or improper services.

7.2 The Contractor will not be liable for any shortages or improper or defective or damaged Goods and/or Services or defective or improper services unless a written claim is made by the Client within 7 days of the delivery of the Goods and/or Services or the completion of the provision of the services.

7.3 Warranty is 24 months on parts, service and labour from date of initial delivery. Service and labour is Monday to Friday 7.30 am - 4.00pm only. Weekend and holiday attention is chargeable in full. Scots Ice Australia Pty Ltd does not handle service issues for items supplied by others. In the case of purchased finished items that manufacturer's warranty will apply. Specifically excluded from our warranty are:

- (i) Light bulbs and tubes
- (ii) Glass and finish after delivery
- (iii) Electrical and electronic components
- (iv) Consequential damages
- (v) Misuse
- (vi) Wearing parts and seals

7.4 Except for any express warranty given by it, the Contractor excludes all conditions, warranties and terms implied by statute, general law or custom, except any implied condition or warranty the exclusion of which would contravene any statute or cause this clause to be void ("Non-excludable Condition").

7.5 The Contractor accepts no liability for any loss or damage direct or indirect of or to any person or property arising from the installation or operation of Goods and/or Services including consequential loss or damage arising from any circumstances whatsoever, except under a Non-excludable Condition.

7.6 Subject to Clause 9.4 and 9.5 the Contractor undertakes to repair, place or supply (at the Contractor's option) all Goods and/or Services and components thereof supplied by it which the Contractor in its sole and absolute discretion deems to be defective in materials or workmanship under proper, normal and recommended conditions of use and maintenance. This undertaking unless otherwise confirmed in writing by the Contractor covers the provision of labour and parts for 24 months from the date of commissioning of Goods and/or Services by the Contractor's authorised representative or alternatively 30 days after dispatch of the Goods and/or Services from the Contractor's store, whichever of these shall occur first. If the Goods and/or Services are not installed in accordance with the manufacturer's written instructions, the Contractor may at its sole discretion render the warranty partially or wholly invalid.

7.7 Defective replacement spare parts will be repaired or re-supplied for a period of three (3) months of delivery. This undertaking applies only to state capitals and major provincial towns. Remote areas are not covered by this commitment and special enquiries should be made.

7.8 The Contractor's undertaking in Clause 9.6 does not extend to Goods and/or Services and components thereof manufactured either entirely or substantially of glass or similar substances, light globes, infrared or quartz tubes and electrical controls or elements, neither is it extended to include consumable items such as oils, lubricants, cleaning materials and accessory tools.

7.9 The Contractor's undertaking in Clause 9.7 does not extend to include the repair of damage nor to adjustments to equipment as a result of external influences including but not limited to lightning strikes, electrical distributors, water supply disturbances and drainage faults.

7.10 Training of operators is normally conducted during commissioning of the equipment. Re-training of existing operators and training of newly assigned operators after commissioning is not classified as warranty and may only be carried out on a chargeable basis.

7.11 The liability of the Contractor under this warranty is limited to repair or replacement of defective Goods and/or Services or components. All other costs including, without limitation, cartage, carriage and installation shall be borne by the Client. Goods and/or Services or components which fail as a result of operator error, misuse, abuse and inappropriate operation will not be repaired or replaced under warranty.

7.12 While the Goods and/or Services are in the custody of the Contractor for investigation or repair, they shall be at risk of the Client and no liability shall attach to the Contractor, its servants or agents for any damaged occasioned to, or loan, of the Goods and/or Services howsoever arising.

7.13 To obtain the benefit of this warranty, the Client must give notice to the Contractor immediately upon becoming aware of the alleged defect and in any event before the expiration of the said twenty four month period.

7.14 Warranty repairs are carried out during the Contractor's normal business hours (usually 07.30 hrs to 16.00 hrs) Monday to Friday excluding designated Public Holidays. Repairs may be available at times other than normal warranty hours but will not be treated as warranty and will be subject to call-out fees and hourly charges, including penalty rates where applicable.

8. Installation of Specifically Manufactured Goods

If the Client requests that the Contractor shall install the Goods and/or Services, this shall be the subject of a separate contract from that which governs the supply of the Goods and/or Services. The Contractor is not obligated to carry out installation but may elect to provide a quotation after site survey and based on information communicated by the Client. Any subsequent change to site conditions or to the information provided by the Client shall render the quotation invalid and liable to amendment.

8.1 Specific Notes Dishwasher Installation: Temperature inlet of water: 60 deg C +/- 5 deg C, Pressure: 200-400kpa = 30-60psi, Flow rate: 20 litres per minute; pressure limiter required over 400kpa. Dishwasher water tempering valves and water pressure reduction valves may be

required and are the responsibility of on-site plumber and/or builder.

8.2 Specific Notes Exhaust Hoods: Unless specifically stated, quoted and agreed upon, all mechanical works required for exhaust hoods to function are not included. Normal circumstance is that mechanical equipment and work is performed by others and do not form part of the exhaust hood quote, sale and/or installation. Fan motor must be provided with current overload protection and also be provided with differential action, single phase protection (supplied by others). If the above protective measures are not taken the manufacturer's warranty will be void. All fire rating requirements and any acoustic requirements below DBA stated are at the Client's expense.

8.3 Specific Notes Remote Refrigeration: All remote refrigeration is quoted with air-cooled compressors, located no more than 20 metres from connection to cabinets. No electrical or plumbing services are allowed for or included.

9. Force Majeure

If by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Contractor, the Contractor is unable to perform in whole or in part any obligation under this agreement, the Contractor shall be relieved of that obligation under this agreement to the extent and for the period that it is so unable to perform and shall not be liable to the Client in respect of such inability.

10. Default

Upon the occurrence of default by the Client in compliance with these terms or any other agreement with the Contractor;

10.1 The Contractor may at its discretion withhold further supplies of Goods and/or Services or cancel this agreement, or vary the terms of this agreement without prejudice to its rights hereunder **PROVIDED HOWEVER** that the Contractor may at any time and from time to time upon such terms as it may determine waive any of its rights under this Clause, but without prejudice to its rights thereafter of any of the events hereinbefore referred to or upon the continuation after any such waiver of any state of affairs the subject of such waiver.

10.2 The Contractor may at its discretion cancel any credit facility provided to the Client and all monies due on all invoices issued to the Client but not paid shall be due and payable forthwith. The Contractor need not give any notice of the cancellation of the credit facility to the Client.

10.3 The Client shall pay to the Contractor interest at the rate of 2.5% per month on daily balances in respect of any amounts as may from time to time be overdue until paid and such money together with all interest shall be recoverable forthwith from the Client.

10.4 Without prejudice to any other right or remedy the Client shall indemnify the Contractor against any costs fees charges and disbursements charged by any solicitor engaged for the purpose of the collection or recovery of moneys due and payable by the Client to the Contractor on an indemnity basis, and any fees, charges, disbursements or commissions liable to be paid to or charged by any mercantile agency or debt collecting firm engaged for collection of moneys due and payable by the Client.

10.5 The Client shall pay to the Contractor an administration fee of \$50.00 on the occurrence of every event of default.

11. Charge and Security Interest

11.1 The Client hereby charges with payment of any indebtedness to the Contractor all legal and beneficial interest (freehold or leasehold) in land and property, other than Personal Property to which the Personal Property Securities Act 2009 applies, held now or in the future by the Client and upon non-payment of any monies due to the Contractor pursuant to this Agreement the Contractor may take possession of such land or property and exercise and do all or any acts, powers and authorities vested in or given to mortgagees by any statutory provision or at common law or in equity. The Client agrees that if demand is made by the Contractor, the Client receiving such a demand will immediately execute a mortgage (incorporating the covenants contained in Memorandum No.Q860000 registered at the Land Titles Office in Sydney) or other instrument of security, or consent to a caveat, as required, and against the event that the Client fails to do so within a reasonable time of being so requested, the Client hereby irrevocably and by way of security, appoints any credit manager or solicitor engaged by the Contractor to be its true and lawful attorney to execute and register such instruments. Notwithstanding any other provision in this clause and in addition thereto the Contractor may lodge a caveat noting the interest given by this charge on the title of any property of the Client whenever it so wishes.

11.2 The Client grants a security interest to the Contractor in all of its present and after acquired property and in all of its present and future rights in relation to any personal property as defined in the Personal Property Securities Act 2009.

12. GST

The Client must pay to the Contractor any amount which is payable by the Contractor in respect of any supply to the Client on account of GST. Each charge or fee for a supply rendered by the Contractor does not include an amount to cover the liability of the Contractor for GST on any supplies made under this agreement which are taxable supplies within the meaning of the GST Act. In relation to taxable supplies made under this agreement the Contractor agrees to issue the Client with a tax invoice in accordance with the GST Act or a document satisfying the minimum information requirement set out in GSTR 2000/2003 to entitle a recipient of a taxable supply to claim an input tax credit without holding a tax invoice. "GST" means GST as defined in a New Tax System (Good and Services Tax Act 1999). "Supply" means supply as defined in a New Tax System (Goods and Services Tax Act 1999).

13. Trusts

13.1 This clause applies if the Client is a trustee and whether or not the Contractor has notice of the Trust. Where the Client comprises two or more persons and any of those persons is a Trustee this clause applies to such Trustee.

13.2 The Client agrees that even though the Client enters into this Agreement as Trustee of the Trust, the Client also shall be liable personally for the performance and observance of every covenant to be observed and performed by the Client expressed or implied in this Agreement.

13.3 The Client warrants its complete, valid and unfettered power to enter into this Agreement pursuant to the provisions of the Trust including power to obtain the credit facility from the Contractor and to enter into the covenants to be observed and performed by them expressed or implied in this Agreement and warrants that its entry into this Agreement is in the due administration of the Trust.

13.4 The Client covenants that the rights of indemnity which it may have against the property of the Trust have not been, and in the future will not be, excluded, modified, released, lost or diminished (whether by agreement, breach of trust or otherwise).

13.5 The Client shall not, without the Contractor's prior written consent:

- (i) resign or be removed as Trustee of the Trust or appoint or allow the appointment of a new or additional Trustee of the Trust;
- (ii) amend or revoke any of the terms of the Trust;
- (iii) vest or distribute the property of the Trust or advance or distribute any capital of the Trust to a beneficiary or resettle any of the property of the Trust;
- (iv) permit a beneficiary to have the use, occupation, employment or possession of the property of the Trust;
- (v) do or permit or omit to do an act or thing in breach of the Trust or which would permit the Trustee to be removed as Trustee of the Trust;
- (vi) exercise or permit or allow to be exercised a power to change the vesting date of the Trust or provide for an early determination of the Trust;
- (vii) lend any money, give any guarantee or incur any debt other than in the ordinary course of business of the Trust; or
- (viii) pay any of the income of the Trust to any beneficiary of the Trust if such payment will prejudice or affect the Client's ability to pay all monies due to the Contractor.

14. Service

The parties agree that service of any notices, demands, proceedings summons suits or actions ("process") upon the Client may be affected by the Contractor or its solicitors sending such process by prepaid post or by email to the address or email given in the Credit Application. Service shall be deemed to have been affected two business days after the posting or emailing of the process.

15. Jurisdiction

The parties agree that the terms and conditions applying to any credit account opened in the name of the Client and any other agreement between the Contractor and the Client shall be governed by the laws of the State or Territory nominated by the Contractor, in its absolute discretion, or failing any nomination the laws of the State of New South Wales in force for the time being and from time to time, and the parties irrevocably submit generally and unconditionally to the jurisdiction of the Courts of the State or Territory nominated by the Contractor or failing nomination the Courts of the State of New South Wales in respect of claims, proceedings and matters arising out of or in respect of the said credit account or any said Agreement.

16. Privacy Policy

16.1 All emails, documents, images or other recorded information held or used by the Contractor is Personal Information, as defined and referred to in clause 16.3, and therefore considered Confidential Information. The Contractor 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 111C 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"). The Contractor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information held by the Contractor that may result in serious harm to the Client, the Contractor will notify the Client in accordance with the Act and/or 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.

16.2 Notwithstanding Clause 18.1, privacy limitations will extend to the Contractor in respect of Cookies where transactions for purchases/orders transpire directly from the Contractor's website. The Contractor 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:

- IP address, browser, email Client type and other similar details;
- tracking website usage and traffic; and
- reports are available to the Contractor when the Contractor sends and email to the Client, so the Contractor may collect and review that information ("collectively Personal Information").

In order to enable/disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable/disable the Cookie's first by selection the option to enable/disable provided on the website prior to proceeding with a purchase/order via the Contractor's website. 16.3 The Client agrees for the Contractor 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 Client in relation to credit provided by the Contractor.

16.4 The Client agrees that the Contractor may exchange information about the Client with those credit providers and with related body corporates for the following purposes:

- to assess an application by the Client; and/or
- to notify other credit providers of a default by the Client; and/or
- 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
- to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.

16.5 The Client consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit.

16.6 The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other agreed purposes or required by law from time to time):

- the provision of Services; and/or
- analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
- processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- enabling the collection of amounts outstanding in relation to the Services.

16.7 The Contractor may give information about the Client to a CRB for the following purposes:

- to obtain a consumer credit report;
- allow the CRB to create or maintain a credit information file about the Client including credit history.

16.8 The information given to the CRB may include:

- Personal Information as outlined in 16.3 above;
- name of the credit provider and that the Contractor is a current credit provider to the Client;
- whether the credit provider is a licensee;
- type of consumer credit;
- 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);
- 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 Contractor has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payment);
- information that, in the opinion of the Contractor, the Client has committed a serious credit infringement;
- advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

16.9 The Client shall have the right to request (via email) from the Contractor:

- a copy of the Personal Information about the Client retained by the Contractor and the right to request that the Contractor correct any incorrect Personal Information; and
- that the Contractor does not disclose any Personal Information about the Client for the purpose of direct marketing.

16.10 The Contractor will destroy all Personal Information upon the Client's request (via email) 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.

16.11 The Client can make a privacy complaint by contact the Contractor via email. The Contractor 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.

17. Commissioning

17.1 In mainland State capital cities, commissioning is included in the contract price for the supply of the Goods and/or Services. In other areas an additional price may apply. Commissioning by the Contractor's authorised representative includes ensuring that the Goods and/or Services have been correctly installed, starting the Goods and/or Services to ensure that they are operating as intended and instructing the designated operator(s) of the Goods and/or

Services in the correct and safe operation of the Goods and/or Services. 20.2 Commissioning is possible only if the Goods and/or Services are fully installed. If the Contractor's representative attends site at the Client's request to commission equipment that has not been fully installed, the costs of that visit at hourly rates plus travelling expenses shall be invoiced to the Client.

19.3 Commissioning is carried out during normal business hours (07.30 hrs to 16.00 hrs) Monday to Friday excluding designated Public Holidays or unless agreed upon otherwise.

19.4 Commissioning is carried out during a time that is convenient to the Contractor unless an agreement is reached on a specific time with the Client.

18. Termination

The Contractor may at any time terminate any contract for the sale of Goods and/or Services summarily by notice in writing if, but without prejudice to the rights of the Contractor hereunder, including its rights to demand and sue for all outstanding amounts owed by the Client to the Contractor, if:

- any payment is outstanding for more than ten (10) days after the due date, whether legally or formally demanded or not; or
- the Client fails to observe or perform any of these terms and conditions; or
- a resolution is passed or proposed, or a petition is presented or an application filing for the winding up of the Client or an administrator, receiver or receiver and manager is appointed in respect of the property, or any part of the property of the Client; or
- the Client (being a Contractor) is deregistered; or
- the Client makes or proposed to make an arrangement with its creditors; or
- the Client is placed under official management; or
- execution is levied upon the assets of the Client and is not satisfied within ten (10) days.

19. Cancellation and Returns

19.1 Any claim in respect of faulty or defective goods, or in respect of any incorrect supply of goods, must be made by the customer, in writing, within seven (7) days of the receipt of goods, accompanied by a completed credit request and goods return form.

19.2 Scots Ice may cancel any contract to which these Contract Terms apply or cancel delivery of goods at any time before the goods are delivered by giving written notice to the customer. Scots Ice 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 Scots Ice as a direct result of the cancellation (including, but not limited to, any loss of profits).

19.4 A 25% cancellation/restocking fee will be charged on any goods confirmed by written order from the customer for cancellation or returning to Scots Ice's warehouse in Sydney.

19.5 A 75% cancellation fee will be charged for any special project goods or custom made goods, listed and not listed in Scots Ice Price List confirmed by written order from the customer for cancellation or returning to Scots Ice's warehouse in Sydney.

19.6 Under no circumstances are goods to be returned without prior authorisation in writing from Scots Ice.

19.7 The customer is responsible for organising the return of goods and liable for all costs associated with their return. Any goods returned not in re-saleable condition, in the original packaging, will not be accepted and the customer will be liable for payment if full.

20. Water Filters

20.1 Water filters supplied by Scots Ice with the purchase of goods are strictly for the purposes of removing dirt and chlorine and are not to be relied upon for the removal of heavy metals or any other element that could pose damage to the goods through long term exposure. It is therefore the responsibility of the customer to provide a suitable water filter for the goods for the filtration of these damaging elements.

20.2 The water filters and any spare parts associated with the water filters provided by Scots Ice are not covered by any warranty or any damages caused to the goods by misuse or user error.

20.3 Cleaning and maintenance of water filters should be carried out a minimum of every three (3) months. This includes changing the filter cartridge. Failure to do so will void warranty of any goods damaged or affected by this.

20.4 Some areas in Australia are subject to poor water quality. It is the customer's responsibility to ensure that water treatment/filtration meets requirements to avoid any calcification or scale build up. Failure to do so will void warranty

21. Miscellaneous

21.1 Nothing in these Terms and Conditions is intended to exclude, restrict or modify rights which the Client may have under the Competition and Consumer Act 2010 or any other legislation which may not be excluded, restricted or modified by agreement.

21.2 A party waives a right under these Conditions only if it does so in writing. A party does not waive a right simply because it fails to exercise the right, delays exercising the right or only exercises part of the right. A waiver of one breach of a term of these conditions does not operate as a waiver of another breach of the same term or any other term.

21.3 If a provision in these Terms Conditions is wholly or partly invalid or unenforceable in any jurisdiction, that provision or the part of it that is invalid or unenforceable must, to the extent of its invalidity or unenforceability in that jurisdiction be severed from this agreement. All the remaining provisions shall be enforceable between the Contractor and the Client.

21.4 The Contractor may assign or otherwise deal with the benefit of any agreement made pursuant to these Terms and Conditions without the consent of the Client.