

Controlled Power Systems Pty Ltd – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "CPS" means Controlled Power Systems Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Controlled Power Systems Pty Ltd.
- 1.2 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting CPS to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.3 "Services" means all Services (including consultation, manufacturing and/or installation services) or Goods supplied by CPS to the Customer at the Customer's request from time to time (where the context so permits the terms 'Services' or 'Goods' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable (plus any GST where applicable) for the Services as agreed between CPS and the Customer in accordance with clause 5 below.
- 1.5 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
2. **Acceptance**
- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Services.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and CPS.
- 2.3 Any advice, recommendation, information, assistance or service provided by CPS in relation to Goods or Services supplied is given in good faith, is based on CPS' own knowledge and experience and shall be accepted without liability on the part of CPS and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods or Services.
- 2.4 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, CPS reserves the right to substitute comparable Goods (or components of the Goods) and vary the Price as per clause **Error! Reference source not found.** In all such cases CPS will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer's order and/or Services on hold, as per clause 6.2 until such time as CPS and the Customer agree to such changes.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.6 These terms and conditions may be meant to be read in conjunction with CPS' Hire Form, and:
 - (a) where the context so permits, the terms 'Services' or 'Goods' shall include any supply of Equipment, as defined therein; and
 - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
3. **Errors and Omissions**
- 3.1 The Customer acknowledges and accepts that CPS 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 CPS 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 CPS in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of CPS, the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.
4. **Change in Control**
- 4.1 The Customer shall give CPS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number, change of trustees or business practice). The Customer shall be liable for any loss incurred by CPS as a result of the Customer's failure to comply with this clause.
5. **Price and Payment**
- 5.1 At CPS' sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by CPS to the Customer in respect of Services performed or Goods supplied; or
 - (b) CPS' quoted Price (subject to clause 5.2) which shall be binding upon CPS provided that the Customer shall accept CPS' quotation in writing within thirty (30) days.
- 5.2 CPS reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, obscured site defects which require remedial work (e.g. poor existing wiring, etc.), health hazards and safety considerations (such as the discovery of asbestos), availability of machinery, prerequisite work by any third party not being completed, hard rock barriers below the surface or iron reinforcing rods in concrete, hidden pipes and wiring/cabling, etc.) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to CPS in the cost of labour or Goods which are beyond CPS' control.
- 5.3 Variations will be charged for on the basis of CPS' quotation, and will be detailed in writing, and shown as variations on CPS' invoice. The Customer shall be required to respond to any variation submitted by CPS within ten (10) working days. Failure to do so will entitle CPS to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At CPS' sole discretion a non-refundable deposit may be required.
- 5.5 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by CPS, which may be:
 - (a) on completion of the Services; or
 - (b) by way of progress payments in accordance with CPS' specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the site but not yet installed; or
 - (c) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices; or
 - (d) thirty (30) days following the date specified on any invoice or other form as being the date for payment; or
 - (e) the date specified on any invoice or other form as being the date for payment; or
- (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by CPS. Payment may be made by cash, cheque, bank cheque, electronic/online banking, or by any other method as agreed to between the Customer and CPS.
- 9.1 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by CPS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 9.2 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to CPS an amount equal to any GST CPS must pay for any supply by CPS under this or any other contract for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 9.3
6. **Provision of the Services**
- 6.1 Subject to clause 6.2 it is CPS' responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.2 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that CPS claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond CPS' control, including but not limited to any failure by the Customer to:
 - (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify CPS that the site is ready.
- At CPS' sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- CPS may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- Any time specified by CPS for delivery of the Services is an estimate only and CPS will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that CPS is unable to supply the Services as agreed solely due to any action or inaction of the Customer, then CPS shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date, and/or for storage of the Goods.
7. **Risk**
- 7.1 If CPS retains ownership of the Goods under clause 12 then:
 - (a) where CPS is supplying Goods only, all risk for the Goods shall immediately pass to the Customer on delivery and the Customer must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that either:
 - (i) the Customer or the Customer's nominated carrier takes possession of the Goods at CPS' address; or
 - (ii) the Goods are delivered by CPS or CPS' nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
 - (b) where CPS is to both supply and install Goods then CPS shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Customer.
- 7.2 Notwithstanding the provisions of clause 7.1 if the Customer specifically requests CPS to leave Goods outside CPS' premises for collection or to deliver the Goods to an unattended location then such materials shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Customer's expense.
- 7.3 Where CPS is required to install the Goods the Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and CPS shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- In the event asbestos or any other toxic substances are discovered at the site, that it is the Customer's responsibility to ensure the safe removal of the same. The Customer further agrees to indemnify CPS against any costs incurred by CPS as a consequence of such discovery. Under no circumstances will CPS handle removal of asbestos product. The Customer acknowledges that:
 - (a) while CPS may have provided information or figures to the Customer regarding the performance of the Goods, the Customer acknowledges that CPS has given these in good faith, and are estimates based on Clean Energy Council (CEC) and/or industry prescribed estimates; and
 - (b) where the Customer has supplied materials for CPS to complete the Services, or existing materials are in place, the Customer acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. CPS shall not be responsible for any defects in the Services, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of materials supplied by the Customer; and
 - (c) CPS is only responsible for parts that are replaced by CPS and that in the event that other parts/materials, subsequently fail, the Customer agrees to indemnify CPS against any loss or damage to the materials; and
 - (d) in the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Customer then the Customer agrees to notify CPS immediately upon any proposed changes. The Customer agrees to indemnify CPS against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 5.2; and
 - (e) it is the Customer's responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- The Customer also acknowledges and accepts that Goods (including but not limited to steel and/or metal, etc.) supplied may:
 - (a) exhibit variations in shade tone, colour, texture, markings, veining, surface and finish, and contain natural fissures, occlusions, and indentations. CPS will make every effort to match batches/samples of the Goods supplied in order to minimise such variations, but shall not be liable in any way whatsoever where such variations occur; and
 - (b) fade or change colour over time; and
 - (c) expand, contract or distort as a result of exposure to heat, cold, weather, and therefore CPS will accept no responsibility for gaps that may appear during prolonged dry periods; and
 - (d) mark or stain if exposed to certain substances; and
 - (e) be damaged or disfigured by impact or scratching.
8. **Specifications**
- 8.1 The Customer acknowledges that all descriptive specifications, illustrations, dimensions and weights stated in CPS' or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by CPS.
9. **Accuracy of Customer's Plans and Measurements**
- 9.1 CPS shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, CPS accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9.2 Where the Customer is to supply CPS with any design specifications (including, but not limited to CAD drawings) the Customer shall be responsible for providing accurate information. CPS shall be entitled to rely on the accuracy of such information, and it shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate information being provided by the Customer.
- 9.3 In the event the Customer gives information relating to measurements and quantities of the Goods required to complete the Services, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or CPS places an order based on these measurements and quantities. CPS accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.
10. **Customer's Responsibilities**
- 10.1 Prior to CPS commencing the Services the Customer must advise CPS of the precise location of all services on the site and clearly mark the same. The mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the site. Whilst CPS will take all care to avoid damage to any underground services, the Customer agrees to indemnify CPS in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per this clause 10.1.
- 10.2 It is the intention of CPS, and agreed by the Customer, that it is the responsibility of the Customer to:
 - (a) ensure that CPS has clear and free access to the site at the agreed date/s and time/s to enable CPS to undertake the Services. CPS shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to CPS's negligence; and
 - (b) remove any furniture, furnishings or personal goods from the vicinity of the Services. CPS shall not be liable for any damage caused to those items through the Customer's failure to comply with this clause; and
 - (c) be wholly responsible for the removal of rubbish from or clean-up of the worksite; and
 - (d) provide CPS with facilities, as specified by CPS, (including, but not limited to, a suitable free power source) for the duration of the Services.
- 10.3 If CPS notifies the Customer that it intends to store onsite Goods, plant, equipment or tools to be used in performance of the Services, then the Customer shall designate an area for storage and shall take all reasonable precautions to protect such items against destruction, damage, or theft. In the event that such items are destroyed, damaged or stolen then the cost of replacement shall be added to the contract Price and will be shown as a variation as per clause 5.2.
- 10.4 The Customer acknowledges and accepts that it is the Customer's responsibility to ensure that all Goods, plant or equipment which CPS is required to install (or to connect any of its Goods to) are of the correct type, size, rating, standard, quality, colour and finish, conform with all relevant Australian standards and local statutory requirements, and are as specified in the specifications, drawings and plans upon which CPS based the quotation on and therefore, the Customer agrees to indemnify CPS against any costs incurred by CPS in rectifying such errors if required.
- 10.5 The Customer shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
11. **Compliance with Laws**
- 11.1 The Customer and CPS shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 11.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 11.3 The Customer agrees that the site will comply with any SafeWork NSW laws relating to building/construction sites and any other relevant safety standards or legislation.
12. **Title**
- 12.1 CPS and the Customer agree that ownership of the Goods shall not pass until:
 - (a) the Customer has paid CPS all amounts owing to CPS; and
 - (b) the Customer has met all of its other obligations to CPS.
- 12.2 Receipt by CPS 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.
- 12.3 It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 12.1:
 - (a) the Customer is only a bailee of the Goods and unless the Goods have become fixtures must return the Goods to CPS on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for CPS and must pay to CPS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the production of these terms and conditions by CPS shall be sufficient evidence of CPS' rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with CPS to make further enquiries;
 - (d) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for CPS and must pay or deliver the proceeds to CPS on demand;
 - (e) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of CPS and must sell, dispose of or return the resulting product to CPS as it so directs;
 - (f) unless the Goods have become fixtures the Customer irrevocably authorises CPS to enter any premises where CPS believes the Goods are kept and recover possession of the Goods;
 - (g) CPS may recover possession of any Goods in transit whether or not delivery has occurred;
 - (h) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of CPS;
 - (i) CPS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
13. **Personal Property Securities Act 2009 ("PPSA")**

Please note that a larger print version of these terms and conditions is available from CPS on request.

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- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 13.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to CPS for Services – that have previously been supplied and that will be supplied in the future by CPS to the Customer.
- 13.3 The Customer undertakes to:
- 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 CPS may reasonably require to:
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA; or
 - correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);
 - indemnify, and upon demand reimburse, CPS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - not register a financing change statement in respect of a security interest without the prior written consent of CPS;
 - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of CPS;
 - immediately advise CPS of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 13.4 CPS and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 13.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by CPS, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Customer shall unconditionally ratify any actions taken by CPS under clauses 13.3 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 14. Security and Charge**
- 14.1 In consideration of CPS agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Customer indemnifies CPS from and against all CPS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising CPS' rights under this clause.
- 14.3 The Customer irrevocably appoints CPS and each director of CPS as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.
- 15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 15.1 The Customer must inspect all Goods on delivery (or the Services on completion) and must within seven (7) days of delivery notify CPS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods/Services as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow CPS to inspect the Goods or to review the Services provided.
- 15.2 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**).
- 15.3 CPS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, CPS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Services. CPS' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Customer is a consumer within the meaning of the CCA, CPS' liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If CPS is required to replace any Goods under this clause or the CCA, but is unable to do so, CPS may refund any money the Customer has paid for the Goods.
- 15.7 If CPS is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then CPS may refund any money the Customer has paid for the Services but only to the extent that such refund shall take into account the value of Services and Goods which have been provided to the Customer which were not defective.
- 15.8 If the Customer is not a consumer within the meaning of the CCA, CPS' liability for any defect or damage in the Goods is:
 - limited to the value of any express warranty or warranty card provided to the Customer by CPS at CPS' sole discretion;
 - limited to any warranty to which CPS is entitled, if CPS did not manufacture the Goods;
 - otherwise negated absolutely.
- 15.9 Subject to this clause 15, returns will only be accepted provided that:
 - the Customer has complied with the provisions of clause 15.1; and
 - CPS has agreed that the Goods are defective; and
 - the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 15.10 Notwithstanding clauses 15.1 to 15.9 but subject to the CCA, CPS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - the Customer failing to properly maintain or store any Goods;
 - the Customer using the Goods for any purpose other than that for which they were designed;
 - the Customer continuing to use any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - interference with the Services by the Customer or any third party without CPS' prior approval;
 - the Customer failing to follow any instructions or guidelines provided by CPS;
 - fair wear and tear, any accident, or act of God.
- 15.11 Notwithstanding anything contained in this clause if CPS is required by a law to accept a return then CPS will only accept a return on the conditions imposed by that law.
- 16. Intellectual Property**
- 16.1 Where CPS has designed, drawn, written plans or a schedule of Services, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in CPS, and shall only be used by the Customer at CPS' discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of CPS.
- 16.2 The Customer warrants that all designs, specifications or instructions given to CPS will not cause CPS to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify CPS against any action taken by a third party against CPS in respect of any such infringement.
- 16.3 The Customer agrees that CPS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which CPS has created for the Customer.
- 17. Default and Consequences of Default**
- 17.1 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 CPS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Customer owes CPS any money the Customer shall indemnify CPS from and against all costs and disbursements incurred by CPS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, CPS' contract default fee, and bank dishonour fees).
- 17.3 Further to any other rights or remedies CPS may have under this contract, if a Customer has made payment to CPS, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by CPS under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.
- 17.4 Without prejudice to CPS' other remedies at law CPS shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to CPS shall, whether or not due for payment, become immediately payable if:
 - any money payable to CPS becomes overdue, or in CPS' opinion the Customer will be unable to make a payment when it falls due;
 - the Customer has exceeded any applicable credit limit provided by CPS;
 - the Customer 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
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 18. Cancellation**
- 18.1 Without prejudice to any other remedies CPS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions CPS may suspend or terminate the supply of Services to the Customer. CPS will not be liable to the Customer for any loss or damage the Customer suffers because CPS has exercised its rights under this clause.
- 18.2 CPS may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Customer. On giving such notice CPS shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to CPS for Services already performed. CPS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Customer cancels the delivery of Services the Customer shall be liable for any and all loss incurred (whether direct or indirect) by CPS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.4 Cancellation of orders for products made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 19. Privacy Act 1988**
- 19.1 The Customer agrees for CPS to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by CPS.
- 19.2 The Customer agrees that CPS may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
 - to assess an application by the Customer; and/or
 - to notify other credit providers of a default by the Customer; and/or
 - to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 19.3 The Customer consents to CPS being given a consumer credit report to collect overdue payment on commercial credit.
- 19.4 The Customer agrees that personal credit information provided may be used and retained by CPS for the following purposes (and for other agreed purposes or required by):
 - the provision of Services; and/or
 - analysing, verifying and/or checking the Customer'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 Customer; and/or
 - enabling the collection of amounts outstanding in relation to the Services.
- 19.5 CPS may give information about the Customer 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 Customer including credit history.
- 19.6 The information given to the CRB may include:
 - personal information as outlined in 19.1 above;
 - name of the credit provider and that CPS is a current credit provider to the Customer;
 - whether the credit provider is a licensee;
 - type of consumer credit;
 - details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts
- and CPS has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of CPS, the Customer has committed a serious credit infringement;
- (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.7 The Customer shall have the right to request (by e-mail) from CPS:
 - a copy of the information about the Customer retained by CPS and the right to request that CPS correct any incorrect information; and
 - that CPS does not disclose any personal information about the Customer for the purpose of direct marketing.
- 19.8 CPS will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 19.9 The Customer can make a privacy complaint by contacting CPS via e-mail. CPS will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 20. Dispute Resolution**
- 20.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
 - referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 21. Building and Construction Industry Security of Payments Act 1999**
- 21.1 At CPS' sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 21.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.
- 22. Service of Notices**
- Any written notice given under this contract shall be deemed to have been given and received:
 - by handing the notice to the other party, in person;
 - by leaving it at the address of the other party as stated in this contract;
 - by sending it by registered post to the address of the other party as stated in this contract;
 - 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;
 - if sent by email to the other party's last known email address.
- 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.
- 23. Trusts**
- 23.1 If the Customer at any time upon or subsequent to entering into the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not CPS may have notice of the Trust, the Customer covenants with CPS as follows:
 - the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - the Customer has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
 - the Customer will not without consent in writing of CPS (CPS will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - the removal, replacement or retirement of the Customer as trustee of the Trust;
 - any alteration to or variation of the terms of the Trust;
 - any advancement or distribution of capital of the Trust; or
 - any resettlement of the trust property.
- 24. General**
- 24.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which CPS has its principal place of business, and are subject to the jurisdiction of the Ballina Courts in New South Wales.
- 24.3 Subject to clause 15, CPS shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by CPS of these terms and conditions (alternatively CPS' liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 24.4 CPS may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 24.5 The Customer cannot licence or assign without the written approval of CPS.
- 24.6 CPS may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of CPS' sub-contractors without the authority of CPS.
- 24.7 The Customer agrees that CPS may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for CPS to provide Services to the Customer.
- 24.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 24.9 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.