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## Drain King – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 “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.
- 1.2 “Contractor” means Drain King 2016 Limited T/A Drain King, its successors and assigns or any person acting on behalf of and with the authority of Drain King 2016 Limited T/A Drain King.
- 1.3 “Customer” means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Contractor 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 partnership, it shall bind each partner jointly and severally; and
  - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.4 “Goods” means all Goods or Services supplied by the Contractor to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 “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.
- 1.6 “Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.7 “Price” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between the Contractor and the Customer in accordance with clause 5 below.

### 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with the Contractor and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Customers credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that the Contractor 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 the Contractor 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 the Contractor 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 the Contractor; 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 the Contractor 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 and contact phone number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by the Contractor as a result of the Customer’s failure to comply with this clause.

### 5. Price and Payment

- 5.1 At the Contractor’s sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Contractor to the Customer; or
  - (b) the Contractor’s quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 The Contractor 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, adverse sub-soil water conditions, the rapid deterioration or collapse of pipes during the course of the Services, unpredictable weather conditions,

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- the excavation of rock or rock-like substances, as a result of dewatering being required due to permanent groundwater or any interruption to the Services by the Customer or any third party, etc.) which are only discovered on commencement of the Services;
- (d) in the event of increases to the Contractor in the cost of Goods and labour which are beyond the Contractor's control.
- 5.3 Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Customer shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor 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 the Contractor's sole discretion a non-refundable deposit may be required.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Contractor, which may be:
- (a) on delivery of the Goods;
  - (b) on completion of the Services;
  - (c) by way of instalments/progress payments in accordance with the Contractor's payment schedule;
  - (d) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (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 the Contractor.
- 5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and the Contractor.
- 5.7 The Contractor may in its discretion allocate any payment received from the Customer towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Contractor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Contractor, payment will be deemed to be allocated in such manner as preserves the maximum value of the Contractor's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.8 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 the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement 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.

### 6. Delivery of Goods

- 6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that the Contractor (or the Contractor's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 At the Contractor's sole discretion the cost of is either included in the Price.
- 6.3 The Contractor may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.4 Any time specified by the Contractor for delivery of the Goods is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Contractor is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then the Contractor shall be entitled to charge a reasonable fee for redelivery and/or storage.

### 7. Risk

- 7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Contractor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.
- 7.3 If the Customer requests the Contractor to leave Goods outside the Contractor's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 7.4 The Customer accepts that the Contractor will use its best endeavours to identify which sections of drain piping are causing the blockages and will quote on the repair of such sections to rectify the problem. The Customer agrees to indemnify the Contractor for all costs and consequential loss associated with blockages the occur after the completed Services where:
- (a) tree root penetration occurs to adjacent to the cleared or repaired section;
  - (b) tree root penetration occurs between rubber couplings and drain piping, especially when rubber couplings are specified in the scope of the Services.
- 7.5 The Customer acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where the Contractor is requested to merely clear such blockages, the Contractor can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, the Contractor will immediately advise the Customer of the same and shall provide the Customer with an estimate for the full repair of the damaged pipe work.

### 8. Customer's Responsibilities

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- 8.1 The Customer acknowledges that in the event **asbestos** or any other toxic substances are discovered at the site that it is their responsibility to ensure the safe removal of the same. The Customer further agrees to indemnify PRS against any costs incurred by the Contractor as a consequence of such discovery. Under no circumstances will the Contractor handle removal of asbestos product.
- 9. Access**
- 9.1 The Customer shall ensure that PRS has clear and free access to the site at all times to enable them to undertake the Works. PRS shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of PRS.
- 9.2 PRS shall not be held responsible for any damage caused by outside agents. Where the Customer requests PRS to repair such damage then PRS reserves the right to charge the Customer for any costs incurred in rectifying such damage, as per clause 5.2.
- 10. Underground Locations**
- 10.1 Prior to PRS commencing the Works the Customer must advise PRS of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 10.2 Whilst PRS will take all care to avoid damage to any underground services the Customer agrees to indemnify PRS in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.
- 11. Compliance with Laws**
- 11.1 The Customer and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining 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 Notwithstanding clause 11.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") the Contractor agrees at all times comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the site or where they may be acting as a subcontractor for the Customer who has engaged a thirty party head contractor.
- 12. Title**
- 12.1 The Contractor and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Contractor all amounts owing to the Contractor; and
  - (b) the Customer has met all of its other obligations to the Contractor.
- 12.2 Receipt by the Contractor 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 must return the Goods to the Contractor on request;
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand;
  - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs;
  - (e) the Customer irrevocably authorises the Contractor to enter any premises where the Contractor believes the Goods are kept and recover possession of the Goods;
  - (f) the Contractor may recover possession of any Goods in transit whether or not delivery has occurred;
  - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Contractor;
  - (h) the Contractor 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 1999 ("PPSA")**
- 13.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Customer to the Contractor for Services – that have previously been supplied and that will be supplied in the future by the Contractor to the Customer.
- 13.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;

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- (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Contractor; and
  - (d) immediately advise the Contractor 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.
- 13.3 The Contractor and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 13.5 Unless otherwise agreed to in writing by the Contractor, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.6 The Customer shall unconditionally ratify any actions taken by the Contractor under clauses 13.1 to 13.5.
- 13.7 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 the Contractor 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 the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 14.3 The Customer irrevocably appoints the Contractor and each director of the Contractor as the Customer's true and lawful attorney/s 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

- 15.1 The Customer shall inspect the Goods on delivery and shall within twenty-four (24) hours of delivery (time being of the essence) notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Contractor an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Contractor has agreed in writing that the Customer is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) replacing the Goods or repairing the Goods.
- 15.2 Goods will not be accepted for return other than in accordance with 15.1 above, and provided that:
- (a) the Contractor has agreed in writing to accept the return of the Goods; and
  - (b) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
  - (c) the Contractor will not be liable for Goods which have not been stored or used in a proper manner; and
  - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

### 16. Warranty

- 16.1 Subject to the conditions of warranty set out in clause 16.2 the Contractor warrants that if any defect in any workmanship of the Contractor becomes apparent and is reported to the Contractor within twelve (12) months of the date of delivery in relation new Goods only and does not include repairs (time being of the essence) then the Contractor will either (at the Contractor's sole discretion) replace or remedy the workmanship.
- 16.2 The conditions applicable to the warranty given by clause 16.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Customer to properly maintain any Goods; or
    - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Contractor; or
    - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
    - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (v) fair wear and tear, any accident or act of God.
  - (b) the warranty shall cease and the Contractor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Contractor's consent.
  - (c) in respect of all claims the Contractor shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 16.3 For Goods not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Contractor shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

### 17. Consumer Guarantees Act 1993

- 17.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Contractor to the Customer.

**18. Intellectual Property**

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

**19. Default and Consequences of Default**

- 19.1 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 the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Customer owes the Contractor any money the Customer shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's collection agency costs, and bank dishonour fees).
- 19.3 Further to any other rights or remedies the Contractor may have under this Contract, if a Customer has made payment to the Contractor, 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 the Contractor under this clause 19 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.
- 19.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer has exceeded any applicable credit limit provided by the Contractor;
  - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

**20. Cancellation**

- 20.1 Without prejudice to any other remedies the Contractor may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Goods to the Customer. The Contractor will not be liable to the Customer for any loss or damage the Customer suffers because the Contractor has exercised its rights under this clause.
- 20.2 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Contractor shall repay to the Customer any money paid by the Customer for the Goods. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 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 the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).

**21. Privacy Policy**

- 21.1 All emails, documents, images or other recorded information held or used by the Contractor is Personal Information as defined and referred to in clause 21.3 and therefore considered confidential. The Contractor acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then 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 Customers Personal Information, held by the Contractor that may result in serious harm to the Customer, the Contractor will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 21.2 Notwithstanding clause 21.1, 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 Customer's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to the Contractor when the Contractor sends an email to the Customer, 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 Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the Contractor's website.
- 21.3 The Customer authorises the Contractor or the Contractor's agent to:
- (a) access, collect, retain and use any information about the Customer;

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- (i) (including, 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 or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
  - (ii) for the purpose of marketing products and services to the Customer.
  - (b) disclose information about the Customer, whether collected by the Contractor from the Customer directly or obtained by the Contractor from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 21.4 Where the Customer is an individual the authorities under clause 21.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 21.5 The Customer shall have the right to request the Contractor for a copy of the Personal Information about the Customer retained by the Contractor and the right to request the Contractor to correct any incorrect Personal Information about the Customer held by the Contractor.

### 22. Service of Notices

- 22.1 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 email to the other party's last known email address.
- 22.2 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.

### 23. Trusts

- 23.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Customer covenants with the Contractor as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
  - (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
  - (c) the Customer will not without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
    - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.

### 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 Zealand and are subject to the jurisdiction of the Auckland Court.
- 24.3 The Contractor 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 the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 24.4 The Contractor 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 the Contractor.
- 24.6 The Contractor 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 the Contractor's sub-contractors without the authority of the Contractor.
- 24.7 The Customer agrees that the Contractor may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Contractor to provide Goods 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.