
Town and Country Drilling Services Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 "T&CD" means Town and Country Drilling Services Pty Ltd ATF Phillips Family Trust T/A Town and Country Drilling Services Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Town and Country Drilling Services Pty Ltd ATF Phillips Family Trust T/A Town and Country Drilling Services Pty Ltd.
- 1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by T&CD 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).
- 1.4 "Price" means the Price payable for the Goods as agreed between T&CD 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 These terms and conditions may only be amended with T&CD's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and T&CD.
- 2.3 The Customer accepts and acknowledges that dewatering may take two (2) days to take effect.

3. Electronic Transactions Act 2000

- 3.1 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.

4. Change in Control

- 4.1 The Customer shall give T&CD 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/s, or business practice). The Customer shall be liable for any loss incurred by T&CD as a result of the Customer's failure to comply with this clause.

5. Price and Payment

- 5.1 At T&CD's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by T&CD to the Customer; or
 - (b) T&CD'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 T&CD reserves the right to change the Price if a variation to T&CD's quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional works required due to unforeseen circumstances such as poor weather conditions, hard rock or other barriers below the surface or iron reinforcing rods in concrete, other latent soil conditions, hidden underground pipes and wiring, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, extra time required or as a result of any increase to T&CD in the cost of materials and labour) will be charged for on the basis of T&CD's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 5.3 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, T&CD reserves the right to treat all retentions as placing the Customer's account into default.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by T&CD, which may be:
 - (a) on delivery of the Goods;
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by T&CD.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to one and a half percent (1.5%) of the Price), or by any other method as agreed to between the Customer and T&CD.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to T&CD an amount equal to any GST T&CD must pay for any supply by T&CD 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 T&CD (or T&CD'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 T&CD's sole discretion the cost of delivery is included in the Price.
- 6.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then T&CD shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
 - (a) such discrepancy in quantity shall not exceed five percent (5%); and
 - (b) the Price shall be adjusted pro rata to the discrepancy.
- 6.5 Any time or date given by T&CD to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and T&CD will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

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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, T&CD is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by T&CD is sufficient evidence of T&CD's rights to receive the insurance proceeds without the need for any person dealing with T&CD to make further enquiries.
- 7.3 If the Customer requests T&CD to leave Goods outside T&CD'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 acknowledges that, whilst T&CD shall make all endeavours to remove from the site all rubbish, excavated material, vegetation, demolished or dismantled structures, T&CD shall not be held liable for any small amounts of rubbish, and the like, remaining at the site.
- 7.5 The Customer shall ensure that T&CD has clear and free all-weather access to the site at all times to enable them to undertake the Services, and that such access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by T&CD.
- 7.6 As all-weather access is to be provided, any recovery costs incurred by T&CD due to access problems at the site shall be passed onto the Customer. T&CD shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways, buildings, trees, fences, gates, concreted or paved, grassed areas or damage to crops), unless due to the negligence of T&CD.
- 7.7 Where T&CD is required to provide installation Services, the Customer warrants that the structure of the premises or equipment in or upon which the installation Services are carried out is sound and will sustain the Services and T&CD shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the Services.
- 7.8 T&CD will take all reasonable precautions against fire during site gas cutting, welding, and other installation procedures. Insurance of buildings and contents etc., and any items installed during installation shall be the responsibility of the Customer.
- 7.9 Any advice, recommendation, information, assistance or service provided by T&CD in relation to Services provided is given in good faith, is based on T&CD's own knowledge and experience and shall be accepted without liability on the part of T&CD 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 Services.
- 7.10 The final location of the exact drilling site must be determined on site by the Customer and is the Customer's sole responsibility.
- 7.11 If during the drilling operation, and as a result of extraordinary down hole issues, T&CD decides (based on industry experience) that the risk is too great to continue the hole, T&CD shall advise the Customer, or the Customer's agent, regarding the risk of continuing. Where such advice is not acted on, and T&CD is requested on continue, then T&CD shall require the Customer or their agent to authorise the continuance of the Services in writing. T&CD shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent continuance of the Services, and the Customer shall reimburse T&CD for any equipment lost at the landed, new cost price of the replacement equipment.
- 7.12 Where the Customer installs the Goods regardless of whether or not T&CD's instructions are followed, the Customer accepts full responsibility for all damage and injury to any person and to any public or private property which may result, and shall indemnify T&CD or any such damages or associated costs.

8. Customer's Responsibilities

- 8.1 It shall be the Customer's responsibility to ensure that, prior to commencement of the Services by T&CD:
- (a) all gas and electricity are cancelled and disconnected (from the main supply at the street); and
 - (b) a safety fence is erected around the perimeter of the site to ensure public safety; and
 - (c) T&CD is advised of the precise location of all known underground services, and asbestos and/or or hazardous materials (and that these are clearly marked) on site. 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. Whilst T&CD will take all care to avoid damage to any underground services the Customer agrees to indemnify T&CD 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 by the Customer.
 - (d) the Customer will supply temporary lighting, telecommunications, compressed air, lighting, toilet, waste disposal amenities, eating and first aid facilities if required.
- 8.2 The Customer hereby takes full responsibility for selecting the exact site of the borehole to be drilled. In the event that the earth conditions will not reasonably permit drilling of a hole in the spot located by the Customer and T&CD finds it necessary to make a move due to earth conditions, the Price shall be at the same rate as initially quoted for the first hole plus the full Price for the new location and the hole.

9. Artefact and Waste Removal

- 9.1 In the event that, during the course of the Services, T&CD discovers any fossils, artefacts or any other remains of geological or archaeological interest, or any undisclosed waster and/or hazardous materials, then T&CD reserves the right to halt all Services and immediately notify the Customer. The Customer accepts and agrees that all additional costs that may be incurred by T&CD as a result of removal of all such materials (including where T&CD agrees to remove such materials for the Customer), and any resulting delay to the Services, shall be borne by the Customer and shall be treated as a variation in accordance with clause 5.2 above. Under no circumstances will T&CD undertake the removal of asbestos.

10. Insurance

- 10.1 Unless otherwise stated in writing, T&CD shall not be responsible for loss or damage that occurs due to burglary, fire, water accident or any other cause to the Customer's property when left in T&CD's custody, and it shall not be obligatory on the part of T&CD to ensure or exercise special care with the Customer's property.
- 10.2 T&CD shall have public liability insurance of at least \$5m. It is the Customer's responsibility to ensure that they are similarly insured during the course of the Services.

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11. Compliance with Laws

- 11.1 The Customer and T&CD 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 occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

12. Buyer's Disclaimer

- 12.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by T&CD and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.
- 12.2 Where T&CD provides advice to the Customer, such advice is given in good faith only. The Customer acknowledges that T&CD shall not be liable for any claims howsoever arising out of any advice given.

13. Title

- 13.1 T&CD and the Customer agree that ownership of the Goods shall not pass until:
 - (a) the Customer has paid T&CD all amounts owing to T&CD; and
 - (b) the Customer has met all of its other obligations to T&CD.
- 13.2 Receipt by T&CD 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.
- 13.3 It is further agreed that:
 - (a) until ownership of the Goods passes to the Customer in accordance with clause 13.1 that the Customer is only a bailee of the Goods and must return the Goods to T&CD on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for T&CD and must pay to T&CD 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 T&CD and must pay or deliver the proceeds to T&CD 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 T&CD and must sell, dispose of or return the resulting product to T&CD as it so directs.
 - (e) the Customer irrevocably authorises T&CD to enter any premises where T&CD believes the Goods are kept and recover possession of the Goods.
 - (f) T&CD 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 T&CD.
 - (h) T&CD may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

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

- 14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 14.2 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 T&CD for Services – that have previously been supplied and that will be supplied in the future by T&CD to the Customer.
- 14.3 The Customer undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which T&CD may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 14.3(a)(i) or 14.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, T&CD for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of T&CD;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of T&CD;
 - (e) immediately advise T&CD 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.
- 14.4 T&CD 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.
- 14.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 14.7 Unless otherwise agreed to in writing by T&CD, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.8 The Customer must unconditionally ratify any actions taken by T&CD under clauses 14.3 to 14.5.

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14.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

- 15.1 In consideration of T&CD 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).
- 15.2 The Customer indemnifies T&CD from and against all T&CD's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising T&CD's rights under this clause.
- 15.3 The Customer irrevocably appoints T&CD and each director of T&CD as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer's behalf.

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

- 16.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify T&CD 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 as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow T&CD to inspect the Goods.
- 16.2 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**).
- 16.3 T&CD acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, T&CD makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. T&CD's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.5 If the Customer is a consumer within the meaning of the CCA, T&CD's liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.6 If T&CD is required to replace the Goods under this clause or the CCA, but is unable to do so, T&CD may refund any money the Customer has paid for the Goods.
- 16.7 If the Customer is not a consumer within the meaning of the CCA, T&CD's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by T&CD at T&CD's sole discretion;
 - (b) limited to any warranty to which T&CD is entitled, if T&CD did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 16.8 Subject to this clause 16, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 16.1; and
 - (b) T&CD has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 16.9 Notwithstanding clauses 16.1 to 16.8 but subject to the CCA, T&CD shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by T&CD;
 - (e) fair wear and tear, any accident, or act of God.
- 16.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by T&CD as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that T&CD has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 16.10.
- 16.11 T&CD may in its absolute discretion accept non-defective Goods for return in which case T&CD may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.

17. Intellectual Property

- 17.1 The Customer warrants that all designs, specifications or instructions given to T&CD will not cause T&CD to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify T&CD against any action taken by a third party against T&CD in respect of any such infringement.
- 17.2 The Customer agrees that T&CD may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which T&CD has created for the Customer.

18. Default and Consequences of Default

- 18.1 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 T&CD's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Customer owes T&CD any money the Customer shall indemnify T&CD from and against all costs and disbursements incurred by T&CD in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, T&CD's contract default fee, and bank dishonour fees).

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- 18.3 Further to any other rights or remedies T&CD may have under this contract, if a Customer has made payment to T&CD by credit card, 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 T&CD under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 18.4 Without prejudice to any other remedies T&CD may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions T&CD may suspend or terminate the supply of Goods to the Customer. T&CD will not be liable to the Customer for any loss or damage the Customer suffers because T&CD has exercised its rights under this clause.
- 18.5 Without prejudice to T&CD's other remedies at law T&CD shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to T&CD shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to T&CD becomes overdue, or in T&CD's opinion the Customer will be unable to make a payment when it falls due;
 - (b) 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 19. Cancellation**
- 19.1 T&CD 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 T&CD shall repay to the Customer any money paid by the Customer for the Goods. T&CD shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.2 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 T&CD as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 20. Privacy Act 1988**
- 20.1 The Customer agrees for T&CD 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 T&CD.
- 20.2 The Customer agrees that T&CD may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) 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
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 20.3 The Customer consents to T&CD being given a consumer credit report to collect overdue payment on commercial credit.
- 20.4 The Customer agrees that personal credit information provided may be used and retained by T&CD for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 20.5 T&CD may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 20.6 The information given to the CRB may include:
- (a) personal information as outlined in 20.1 above;
 - (b) name of the credit provider and that T&CD is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) 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);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and T&CD has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of T&CD, 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).
- 20.7 The Customer shall have the right to request (by e-mail) from T&CD:
- (a) a copy of the information about the Customer retained by T&CD and the right to request that T&CD correct any incorrect information; and
 - (b) that T&CD does not disclose any personal information about the Customer for the purpose of direct marketing.
- 20.8 T&CD 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 agreement or is required to be maintained and/or stored in accordance with the law.
- 20.9 The Customer can make a privacy complaint by contacting T&CD via e-mail. T&CD 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.

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21. Unpaid Seller's Rights

- 21.1 Where the Customer has left any item with T&CD for repair, modification, exchange or for T&CD to perform any other service in relation to the item and T&CD has not received or been tendered the whole of any monies owing to it by the Customer, T&CD shall have, until all monies owing to T&CD are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 21.2 The lien of T&CD shall continue despite the commencement of proceedings, or judgment for any monies owing to T&CD having been obtained against the Customer.

22. Dispute Resolution

- 22.1 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:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

23. General

- 23.1 The failure by T&CD to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect T&CD'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.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia in which T&CD has its principal place of business, and are subject to the jurisdiction of the courts in South Australia.
- 23.3 Subject to clause 16, T&CD 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 T&CD of these terms and conditions (alternatively T&CD's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 23.4 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 T&CD nor to withhold payment of any invoice because part of that invoice is in dispute.
- 23.5 T&CD may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 23.6 The Customer agrees that T&CD may amend these terms and conditions at any time. If T&CD makes a change to these terms and conditions, then that change will take effect from the date on which T&CD notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for T&CD to provide Goods to the Customer.
- 23.7 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.
- 23.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.