
DJ Electrical & Air Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 "DJE&A" means DJ Electrical & Air Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of DJ Electrical & Air Pty Ltd.
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting DJE&A to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Goods" means all Goods or Services supplied by DJE&A to the Client at the Client'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 (plus any GST where applicable) for the Goods as agreed between DJE&A and the Client in accordance with clause 6 below.
- 1.5 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 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 Client and DJE&A.
- 2.3 If, during the course of installation when the Services are being conducted within and around switchboards, the same is found to be defective or deemed to be unsafe by DJE&A, then DJE&A shall notify the Client immediately. The power, if isolated, will not be re-energised until such time as the existing condition has been rectified and made safe in accordance with the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Services including any Goods and labour shall be to the Client's account.

3. Electronic Transactions (Queensland) Act 2001

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that DJE&A 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 DJE&A 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 DJE&A in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of DJE&A; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

5. Change in Control

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

6. Price and Payment

- 6.1 At DJE&A's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by DJE&A to the Client; or
 - (b) DJE&A's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 DJE&A 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, availability of machinery, safety considerations, prerequisite work by any third party not being completed, obscured building defects, change of design, availability of Goods, hard rock barriers below the surface or iron reinforcing rods in concrete, hidden pipes and wiring in walls etc) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to DJE&A in the cost of labour or materials which are beyond DJE&A's control.
- 6.3 Variations will be charged for on the basis of DJE&A's quotation, and will be detailed in writing, and shown as variations on DJE&A's invoice. The Client shall be required to respond to any variation submitted by DJE&A within ten (10) working days. Failure to do so will entitle DJE&A to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At DJE&A's sole discretion a deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by DJE&A, which may be:
- (a) on delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with DJE&A's payment schedule;
 - (c) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by DJE&A.
- 6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and DJE&A.

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- 6.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by DJE&A nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to DJE&A an amount equal to any GST DJE&A must pay for any supply by DJE&A under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery of Goods

- 7.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that DJE&A (or DJE&A's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 7.2 At DJE&A's sole discretion the cost of delivery is included in the Price.
- 7.3 Any time specified by DJE&A for delivery of the Goods is an estimate only and DJE&A will not be liable for any loss or damage incurred by the Client 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 DJE&A is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then DJE&A shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.4 Subject to clause 7.5 it is DJE&A's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 7.5 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that DJE&A claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond DJE&A's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify DJE&A that the site is ready.

8. Risk

- 8.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, DJE&A is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by DJE&A is sufficient evidence of DJE&A's rights to receive the insurance proceeds without the need for any person dealing with DJE&A to make further enquiries.
- 8.3 If the Client requests DJE&A to leave Goods outside DJE&A's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 8.4 Where the Client has supplied materials for DJE&A to complete the Services, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. DJE&A 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 Client.
- 8.5 The Client acknowledges that DJE&A is only responsible for parts that are replaced by DJE&A and that in the event that other parts/Goods, subsequently fail, the Client agrees to indemnify DJE&A against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 8.6 The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) that DJE&A, its employees or DJE&A's reasonably form the opinion that the Client's premises is not safe for the installation of Goods to proceed then DJE&A shall be entitled to delay installation of the Goods (in accordance with the provisions of clause 7.5 above) until DJE&A is satisfied that it is safe for the installation to proceed.
- 8.7 Whilst the final location of the condensing unit is at the discretion of the Client, a charge will apply as a variation as per clause 6.2, if the Client requests the unit to not be located adjacent to the external wall, due to the extra piping required.
- 8.8 The final location of the wall, window or floor unit must be determined on site by the Client.
- 8.9 DJE&A shall upon installation ensure that all installed Goods meet current industry standards applicable to noise levels, however DJE&A cannot guarantee that noise levels will remain constant post installation as the Goods may be impacted by many factors such as the weather, lack of maintenance, tampering etc.
- 8.10 In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Client shall be responsible for any and all costs involved.
- 8.11 The Client acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- 8.12 DJE&A shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, DJE&A accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.13 Any advice, recommendation, information, assistance or service provided by DJE&A in relation to Goods or Services supplied is given in good faith, is based on DJE&A's own knowledge and experience and shall be accepted without liability on the part of DJE&A and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.

9. Access

- 9.1 The Client shall ensure that DJE&A has clear and free access to the work site at all times to enable them to undertake the Services. DJE&A 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 DJE&A.

10. Underground Locations

- 10.1 Prior to DJE&A commencing any work the Client must advise DJE&A of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client 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 DJE&A will take all care to avoid damage to any underground services the Client agrees to indemnify DJE&A 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 Client and DJE&A 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 Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 11.3 The Client agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 11.4 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations 2002. All of the cabling work will comply with the Australian and New Zealand Wiring standards.

12. Title

- 12.1 DJE&A and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid DJE&A all amounts owing to DJE&A; and
 - (b) the Client has met all of its other obligations to DJE&A.
- 12.2 Receipt by DJE&A 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:
- (a) until ownership of the Goods passes to the Client in accordance with clause 12.1 that the Client is only a bailee of the Goods and must return the Goods to DJE&A on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for DJE&A and must pay to DJE&A the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for DJE&A and must pay or deliver the proceeds to DJE&A on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of DJE&A and must sell, dispose of or return the resulting product to DJE&A as it so directs.
 - (e) the Client irrevocably authorises DJE&A to enter any premises where DJE&A believes the Goods are kept and recover possession of the Goods.
 - (f) DJE&A may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Client 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 DJE&A.
 - (h) DJE&A may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

- 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 Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to DJE&A for Services – that have previously been supplied and that will be supplied in the future by DJE&A to the Client.
- 13.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which DJE&A 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 13.3(a)(i) or 13.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, DJE&A 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 DJE&A;
 - (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 DJE&A;
 - (e) immediately advise DJE&A 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 DJE&A and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

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- 13.7 Unless otherwise agreed to in writing by DJE&A, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client must unconditionally ratify any actions taken by DJE&A 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 DJE&A agreeing to supply the Goods, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies DJE&A from and against all DJE&A's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising DJE&A's rights under this clause.
- 14.3 The Client irrevocably appoints DJE&A and each director of DJE&A as the Client'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 Client's behalf.

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

- 15.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify DJE&A in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Client must allow DJE&A to inspect the Goods.
- 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 DJE&A 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, DJE&A makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. DJE&A's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Client is a consumer within the meaning of the CCA, DJE&A's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If DJE&A is required to replace the Goods under this clause or the CCA, but is unable to do so, DJE&A may refund any money the Client has paid for the Goods.
- 15.7 If the Client is not a consumer within the meaning of the CCA, DJE&A'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 Client by DJE&A at DJE&A's sole discretion;
 - (b) limited to any warranty to which DJE&A is entitled, if DJE&A did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 15.8 Subject to this clause 15, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 15.1; and
 - (b) DJE&A has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client'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.
- 15.9 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, DJE&A shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client 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 Client failing to follow any instructions or guidelines provided by DJE&A;
 - (e) fair wear and tear, any accident, or act of God.
- 15.10 Notwithstanding anything contained in this clause if DJE&A is required by a law to accept a return then DJE&A will only accept a return on the conditions imposed by that law.

16. Intellectual Property

- 16.1 Where DJE&A has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of DJE&A. Under no circumstances may such designs, drawings and documents be used without the express written approval of DJE&A.
- 16.2 The Client warrants that all designs, specifications or instructions given to DJE&A will not cause DJE&A to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify DJE&A against any action taken by a third party against DJE&A in respect of any such infringement.
- 16.3 The Client agrees that DJE&A may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which DJE&A has created for the Client.

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

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- 17.3 Further to any other rights or remedies DJE&A may have under this contract, if a Client has made payment to DJE&A by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by DJE&A under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 17.4 Without prejudice to any other remedies DJE&A may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions DJE&A may suspend or terminate the supply of Goods to the Client. DJE&A will not be liable to the Client for any loss or damage the Client suffers because DJE&A has exercised its rights under this clause.
- 17.5 Without prejudice to DJE&A's other remedies at law DJE&A shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to DJE&A shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to DJE&A becomes overdue, or in DJE&A's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by DJE&A;
 - (c) the Client 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 Client or any asset of the Client.
- 18. Cancellation**
- 18.1 Without prejudice to any other remedies DJE&A may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions DJE&A may suspend or terminate the supply of Goods to the Client. DJE&A will not be liable to the Client for any loss or damage the Client suffers because DJE&A has exercised its rights under this clause.
- 18.2 DJE&A 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 Client. On giving such notice DJE&A shall repay to the Client any money paid by the Client for the Goods. DJE&A shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by DJE&A as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 19. Privacy Act 1988**
- 19.1 The Client agrees for DJE&A 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 Client in relation to credit provided by DJE&A.
- 19.2 The Client agrees that DJE&A may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 19.3 The Client consents to DJE&A being given a consumer credit report to collect overdue payment on commercial credit.
- 19.4 The Client agrees that personal credit information provided may be used and retained by DJE&A 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 Client'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 Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 19.5 DJE&A may give information about the Client 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 Client including credit history.
- 19.6 The information given to the CRB may include:
- (a) personal information as outlined in 19.1 above;
 - (b) name of the credit provider and that DJE&A is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and DJE&A has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of DJE&A, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.7 The Client shall have the right to request (by e-mail) from DJE&A:
- (a) a copy of the information about the Client retained by DJE&A and the right to request that DJE&A correct any incorrect information; and
 - (b) that DJE&A does not disclose any personal information about the Client for the purpose of direct marketing.
- 19.8 DJE&A will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 19.9 The Client can make a privacy complaint by contacting DJE&A via e-mail. DJE&A 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

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event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

20. Unpaid Seller's Rights

- 20.1 Where the Client has left any item with DJE&A for repair, modification, exchange or for DJE&A to perform any other service in relation to the item and DJE&A has not received or been tendered the whole of any moneys owing to it by the Client, DJE&A shall have, until all moneys owing to DJE&A 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.
- 20.2 The lien of DJE&A shall continue despite the commencement of proceedings, or judgment for any moneys owing to DJE&A having been obtained against the Client.

21. Building and Construction Industry Payments Act 2004

- 21.1 At DJE&A's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Payments Act 2004 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 Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.

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 facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) 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 Client 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 DJE&A may have notice of the Trust, the Client covenants with DJE&A as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client 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 Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
 - (c) the Client will not without consent in writing of DJE&A (DJE&A will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust 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 Queensland, the state in which DJE&A has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 24.3 Subject to clause 15 DJE&A shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by DJE&A of these terms and conditions (alternatively DJE&A's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 24.4 DJE&A may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 24.5 The Client cannot licence or assign without the written approval of DJE&A.
- 24.6 DJE&A 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 Client agrees and understands that they have no authority to give any instruction to any of DJE&A's sub-contractors without the authority of DJE&A.
- 24.7 The Client agrees that DJE&A may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for DJE&A to provide Goods to the Client.
- 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.