

Recompute – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "Supplier" means BH Supplies Pty Ltd T/A Recompute, its successors and assigns or any person acting on behalf of and with the authority of BH Supplies Pty Ltd T/A Recompute.
- 1.2 "Client" means the person to whom the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods (which includes any files, information, printed or virtual materials, data, products, hardware or software – whether supplied from a third party or where custom developed or programmed for the Client) and/or Services (which includes device, help-desk support and training) and the hardware and/or software of the Goods or relating to defects and malfunction in, and rectification of the Goods, programming, systems analysis, software and hardware consultancy, specifications and other services as agreed between the parties) supplied by the Supplier to the Client at the Client's request from time to time via telephone, facsimile, modem or at the location of the Client at which the Goods are installed, and 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 the Supplier and the Client in accordance with clause 6 below.
- 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this agreement, each party's Intellectual Property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information and pricing details.
2. **Acceptance**
- 2.1 The Client is taken to have expressly accepted and is immediately bound, jointly and severally, by the 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 Supplier's consent in writing and shall prevail to the extent of any inconsistency with the other document or agreement between the Supplier and the Client.
- 2.3 None of the Supplier's agents or representatives are authorised to make any representations, statements or agreements not expressly or impliedly made by the manager of the Supplier in writing nor is the Supplier bound by any such unauthorised statements.
- 2.4 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on the Supplier's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
- 2.5 The Goods are supplied on the basis of specifications, information and instructions provided by the Client to the Supplier (whether written or verbal). The Client acknowledges that it is their responsibility to ensure that the specifications, information and instructions supplied by the Client to the Supplier (whether written or verbal) are clear, complete and sufficient to satisfy the Supplier's requirements of interpretation and understanding, as once accepted by the Supplier, the Client's order shall be deemed to be interpreted, corrected, modified and amended in accordance with the specifications, information and instructions. Therefore, the Supplier shall not accept any liability for the supply of Goods contrary to the Client's intention, or defects, errors or omissions in the electronic information, information and instructions. Therefore, the Supplier shall not accept any liability for the provision of detailed specifications, information and instructions by the Client or oversight or misinterpretation thereof, and the Supplier may change the Client's order in the event of any discrepancy in re-supplying the Goods, and if reasonably practical, will notify the Client of such costs before they are incurred and the Client agrees to them.
3. **Online Ordering**
- 3.1 The Client acknowledges and agrees that:
- (a) the Supplier does not warrant the websites performance or availability of any of its Goods; and
- (b) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades; and
- (c) there are inherent risks in on-line ordering, information and instructions, and the Supplier cannot warrant against delays or errors in transmitting data between the Client and the Supplier including orders, and you agree that to the maximum extent permitted by law, the Supplier will not be liable for any losses which the Client suffers as a result of online-ordering not being available or for delays or omissions in the electronic information and instructions.
- 3.2 The Supplier reserves the right to terminate your order if it learns that you have provided false or misleading information, interfered with other users or the administration of the Supplier's Services, or violated these terms and conditions.
4. **Electronic Transactions Act 2000**
- 4.1 Electronic signatures shall be deemed to be accepted by either party provided that the Client agrees to be bound by Section 5 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
5. **Change in Control**
- 5.1 The Client shall give the Supplier 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 numbers, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.
6. **Price and Payment**
- 6.1 At the Supplier's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Supplier to the Client; or
- (b) the Price as at the date of delivery of the Goods according to the Supplier's current price list; or
- (c) the Supplier'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 any (30) days.
- 6.2 The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested.
- 6.3 At the Supplier's sole discretion a non-refundable deposit may be required.
- 6.4 Time for payment for the Goods being in the essence, the Price will be payable by the Client on the dates determined by the Supplier, which may be:
- (a) on delivery of the Goods;
- (b) before delivery of the Goods;
- (c) the date specified on any invoice or other form as being the date for payment; or
- (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.
- 6.5 Payment may be made by cash, cheque (with prior approval and must be cleared before release of the Goods), bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to three percent (3%) of the Price), or by any other method as agreed between the Client and the Supplier.
- 6.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for (and/or) the Supplier 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 to take place at the Client's address:
- (a) if the Client or the Client's authorised carrier takes possession of the Goods at the Supplier's address; or
- (b) the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at that address.
- 7.2 At the Supplier's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 7.3 Delivery of Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 7.4 Any time or date given by the Supplier to the Client is an estimate only. The Client must still accept the Goods on the date and time and the Supplier will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.
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 prior to ownership passing to the Client, the Supplier is entitled to receive full insurance as the Client is deemed to be the insured. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- 8.3 Unless otherwise stated in writing by the Supplier, all third-party software is supplied at the Client's own risk and is not in any way warranted by the Supplier nor shall the Supplier be in any way responsible for the implementation or effects of any "patches", "updates", or "fixes" offered by the manufacturer of that software.
- 8.4 The Supplier shall not be held liable for any loss, corruption, deletion of files or data (including, but not limited to software programs, data, files, information, printed or virtual materials, data, products, hardware or software – whether supplied from a third party or where custom developed or programmed for the Client) or Services (which includes device, help-desk support and training) and the hardware and/or software of the Goods or relating to defects and malfunction in, and rectification of the Goods, programming, systems analysis, software and hardware consultancy, specifications and other services as agreed between the parties) supplied by the Supplier, it is the sole responsibility of the Client to back-up any data which they believe to be important, valuable or irreplaceable prior to the Supplier providing the Services. The Client accepts full responsibility for the Client's software and data and the Supplier is not required to advise or remind the Client of appropriate backup procedures.
- 8.5 **Client's Responsibilities**
- 8.6 The Client shall, when placing an order with the Supplier for Goods, provide written confirmation the Supplier requires in order to supply the Goods to the Client.
- 8.7 The Client shall ensure that the Supplier's personnel:
- (a) have full access to the Goods and all ancillary equipment at all reasonable times for the purpose of providing the Services;
- (b) are provided with all information, facilities, services and accessories reasonably required by the Supplier to enable it to comply with its obligations under this agreement;
- (c) The Client hereby acknowledges that it is their sole responsibility to:
- (a) establish and maintain proper operation methods consistent with any instructions provided by the manufacturer or supplier of the Goods;
- (b) establish and maintain adequate data back-up plans and methods;
- (c) implement proper procedures for restart of programs and implement checks to satisfy validity of operation;
- (d) comply with requirements of any responsible governmental or statutory authority.
- 8.8 **Client's Disclaimer**
- 8.9 The Client hereby disclaims any right to rescind, or cancel the contract or sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to him by any servant or agent of the Supplier and the Client acknowledges that the Client buys the Goods for their own use and that the Supplier shall not be held liable for any loss, corruption, deletion of files or data (including, but not limited to software programs, data, files, information, printed or virtual materials, data, products, hardware or software – whether supplied from a third party or where custom developed or programmed for the Client) or Services (which includes device, help-desk support and training) and the hardware and/or software of the Goods or relating to defects and malfunction in, and rectification of the Goods, programming, systems analysis, software and hardware consultancy, specifications and other services as agreed between the parties) supplied by the Supplier, it is the sole responsibility of the Client to back-up any data which they believe to be important, valuable or irreplaceable prior to the Supplier providing the Services. The Client accepts full responsibility for the Client's software and data and the Supplier is not required to advise or remind the Client of appropriate backup procedures.
- 8.10 **Title**
- 8.11 The Supplier and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid the Supplier all amounts owing to the Supplier; and
- (b) the Client has met all of its other obligations to the Supplier.
- 8.12 Receipt by the Supplier 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.
- 8.13 The Client agrees that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 11.1 that the Client is only a bailee of the Goods and must return the Goods to the Supplier on request;
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier such proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Client must not sell, dispose of, otherwise part with possession of, or otherwise dispose of the Goods 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 insurance in trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand;
- (d) the Client should not convert or process the Goods or mix them with other goods but if the Client does so then the Client must hold the proceeds of any insurance in trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand;
- (e) the Client irrevocably appoints the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods;
- (f) the Supplier 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 the Supplier;
- (h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 8.14 **Personal Property Securities Act 2009 ("PPSA")**
- 8.15 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 8.16 Upon assent to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement under the PPSA and the Client creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to the Supplier for Services – which the Client has provided and that will be supplied in the future by the Supplier to the Client.
- 8.17 The Client undertakes to:
- (a) comply with any other documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier 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 documents required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 12.3(a) or 12.3(a)(b);
- (b) indemnify and upon demand reimburse the Supplier 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 the Supplier;
- (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 the Supplier;
- (e) immediately advise the Supplier 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.
- 8.18 The Supplier 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.
- 8.19 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.20 The Client agrees to act as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.21 Unless otherwise agreed to in writing by the Supplier, the Client waives their right to request a verification statement in accordance with section 157 of the PPSA.
- 8.22 The Client must unconditionally ratify any actions taken by the Supplier under clauses 12.3 to 12.5.
- 8.23 The Client agrees to indemnify the Supplier for any loss or damage incurred by the Supplier in connection with 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.
- 8.24 **Security and Privity**
- 8.25 In consideration of the Supplier agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or chattel 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).
- 8.26 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 8.27 The Client irrevocably appoints the Supplier and each director of the Supplier to request and to request the Client to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.
- 8.28 **Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 8.29 The Client must inspect the Goods immediately on delivery and must within three (3) days of delivery notify the Supplier 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 an inspection becomes evident. Upon such notification the Client must allow the Supplier to inspect the Goods.
- 8.30 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).
- 8.31 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 8.32 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions (including but not limited to the quality or suitability of the Goods). The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 8.33 If the Client is a consumer within the meaning of the CCA, the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Client has paid for the Goods.
- 8.34 If the Client is not a consumer within the meaning of the CCA, the Supplier may, at its absolute discretion accept non-defective Goods or (a) limited to the value of any express warranty or warranty card provided to the Client by the Supplier at the Supplier's sole discretion;
- (b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods;
- (c) otherwise negated absolutely.
- 8.35 Subject to this clause 14, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 14.1; and
- (b) the Supplier 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.
- 8.36 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA:
- (a) the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (i) the Client failing to properly maintain or store any Goods;
- (ii) the Client using the Goods for any purpose other than that for any application not significant; and
- (iii) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent person;
- (iv) the Client failing to follow any instructions or guidelines provided by the Supplier;
- (v) fire, war and tear, any accident, or act of God;
- (b) the warranty shall cease and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Client's consent;
- (c) laptop batteries are considered a consumable and are therefore not covered under warranty. The Supplier will not supply a battery that does not hold a charge;
- (d) no warranty is given for:
- (i) software configurations relating to drivers and operating systems;
- (ii) virus infections;
- (iii) power surges;
- (iv) physical damage;
- (v) Bios passwords.
- (e) In respect of all claims the Supplier shall not be liable to compensate the Client in any claim in either realising or recovering the workmanship/Goods or a property assessing the Client's claim.
- 8.37 In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods immediately on delivery and accepts them with all faults and that to the extent the Client makes any claim against the Supplier as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, it is expressly excluded. The Client acknowledges and agrees that the Client has agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 14.10.
- 8.38 The Client agrees that the Supplier may return non-defective Goods for return in which case the Supplier may require the Client to pay handling fees of up to twenty percent (20%) of the value of returned Goods plus freight costs.
- 8.39 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.
- 8.40 **Intellectual Property**
- 8.41 Where the Supplier has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and any other rights or remedies the Supplier may have under the law shall be for the benefit of the Supplier. The Client warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- 8.42 The Client agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any designs, drawings, or Goods which the Supplier has created for the Client.
- 8.43 **Default and Consequences of Default**
- 8.44 Interest on overdue invoices shall accrue daily from the date when the Supplier shall be entitled to cancel all or any part of any order of the Client and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after the date of any such default.
- 8.45 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's contract default fee, and bank dishonour fees).
- 8.46 Without prejudice to a Client that has made payment to the Supplier 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 the Supplier under this clause 16 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.
- 8.47 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment under these terms and conditions) the Supplier may suspend or terminate the supply of Goods to the Client. The Supplier will not be liable to the Client for any loss or damage the Client may suffer because the Supplier has exercised its rights under this clause.
- 8.48 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately due and payable by the Client.
- 8.49 (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment to the Client falls due;
- (b) 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;
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 8.50 **Confidentiality**
- 8.51 Subject to clause 17.2, each party agrees to treat as confidential the other party's Confidential Information, and agrees not to divulge it to any third party without the other party's written consent.
- 8.52 Both parties agree to:
- (a) use the Confidential Information of the other party only to the extent necessary to perform the Services;
- (b) not copy or reproduce any of the Confidential Information of the other party in any way;
- (c) only disclose the other party's Confidential Information to:
- (i) employees and contractors who need access to the information and who have agreed to keep it confidential;
- (ii) its legal advisers and insurance providers if those persons are necessary to the performance of such information confidential; and
- (iii) not disclose the other party's Confidential Information to any person not referred to in this clause except with the other party's prior written consent or if required by law, any stock exchange or any regulatory body.
- 8.53 Either party must promptly return or destroy all Confidential Information of the other party in its possession or control at the other party's request unless required by law to retain it. Confidential Information excludes information:
- (a) generally available in the public domain (without unauthorised disclosure under this agreement);
- (b) received from a third party entitled to disclose it;
- (c) that is independently developed.
- 8.54 The obligations of this clause 17 shall survive termination or cancellation of this agreement.
- 8.55 **Cancellation**
- 8.56 The Supplier 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 the Supplier shall repay to the Client any money paid by the Client for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 8.57 **Privacy Act 1988**
- 8.58 The Client agrees for the Supplier 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 the Supplier.
- 8.59 The Client agrees that the Supplier may exchange information about the Client with those credit providers and will related body corporates for the following purposes:
- (a) to assess an applicant's creditworthiness;
- (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 (including but not limited to:
- (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 8.60 The Client consents to the Supplier being given a consumer credit report to collect and/or make payment on commercial credit.
- 8.61 The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other purposes not listed but intended 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.
- 8.62 The Supplier 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.
- 8.63 The information given to the CRB may include:
- (a) personal information outlined in clause 17.1 above;
- (b) name of the credit provider and that the Supplier 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 defaults and amounts outstanding which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and default recovery action commenced;
- (g) information that the Client has or has not had any overdue payments and all details surrounding that discharge (e.g. dates of payment);
- (h) information that, in the opinion of the Supplier, the Client has committed a serious credit infringement;
- (i) advice that the Client has or has not had any overdue payment in equal to or more than one hundred and fifty dollars (\$150).
- 8.64 The Client shall have the right to request (by e-mail) from the Supplier:
- (a) a copy of the information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect information; and
- (b) that the Supplier does not disclose any personal information about the Client for the purpose of direct marketing.
- 8.65 The Supplier 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.
- 8.66 The Client can make a privacy complaint by contacting the Supplier in writing. In the event that the Client is not satisfied with seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 8.67 **Unpaid Seller's Rights**
- 8.68 Where the Client has left any item with the Supplier for repair, modification, exchange or for the Supplier to perform any other service in relation to the Goods, the Client agrees that if the Supplier has been tendered the whole of any monies owing to it by the Client, the Supplier shall have, until all monies owing to the Supplier 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.
- 8.69 The Client agrees that the Supplier is not limited to damages which under no circumstances shall exceed the Price of the Goods). 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 the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 8.70 The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 8.71 The Client agrees that the Supplier may amend these terms and conditions at any time, if the Supplier makes a change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Supplier to provide Goods to the Client.
- 8.72 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.
- 8.73 The Client warrants that the Client 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.