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## DaRa Switchboards – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 “DaRa” means Brown-Denarusha Pty Ltd T/A DaRa Switchboards, its successors and assigns or any person acting on behalf of and with the authority of Brown-Denarusha Pty Ltd T/A DaRa Switchboards.
- 1.2 “Goods” means all Goods or Services supplied by DaRa 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).
- 1.3 “Client” includes a natural person, a firm, a company, a body corporate, trust or an unincorporated association and an authority to whom DaRa provides Good and/or services and if more than one Client then it is a reference to each Client jointly and severally.
- 1.4 “Client customers” includes a natural person, a firm, a company, a body corporate, trust or an unincorporated association and an authority to whom the Client provides Good and/or services and if more than one Client customer then it is a reference to each Client customer jointly and severally.
- 1.5 “Price” means the Price payable (plus any GST where applicable) by the Client for the Goods as agreed between DaRa and the Client in accordance with clause 5.
- 1.6 “GST” means Goods and Services Tax (GST) as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.7 “Party” or “Parties” means the Client and DaRa.
- 1.8 “Force Majeure Event” means an event or circumstance which is beyond the control and without the fault or negligence of either party affected and which by the exercise of reasonable diligence the party affected was unable to prevent provided that event or circumstance is limited to the following: pandemic, riot, war, lock-out, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, strike or industrial action, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority, ionising radiation or contamination, radioactive toxic explosion, earthquake, flood, fire or other physical natural disaster but excluding weather conditions regardless of severity, delay of delivery of parts to DaRa by being delayed in customs or as a result of the sinking of a ship or plane crash.
- 1.9 “Person” includes a natural person, a firm, a company, a body corporate, an unincorporated association and an authority.

### 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 Goods.
- 2.2 Unless specified otherwise in a written agreement executed by both DaRa and the Client, this Contract shall consist of DaRa’s written quotation, DaRa’s Hire Form and/or Labour Hire Form, these terms and conditions of trade and those terms and conditions, if any, which are imposed by law and which cannot be excluded.
- 2.3 These terms and conditions shall prevail to the extent of any inconsistency with any other document or agreement between the Client and DaRa. DaRa will not be bound by any terms or conditions presented by the Client (whether or not contained or referred to in any order) unless Dara has expressly agreed in writing to incorporate them in the contract. The Client acknowledges that DaRa will not be deemed to have accepted other terms or conditions by the act of accepting an order.
- 2.4 These terms and conditions:  
(a) are current from 22 June 2020;  
(b) apply to all agreements for the supply of Goods and services by DaRa entered into between DaRa and the Client; and  
(c) may be replaced by DaRa at any time and, upon such replacement, the newer terms and conditions shall prevail over these terms and conditions.
- 2.5 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with DaRa and it has been approved with a credit limit established for the account.
- 2.6 In the event that the supply of Goods request exceeds the Clients credit limit and/or the account exceeds the payment terms, DaRa reserves the right to refuse delivery.
- 2.7 The Client acknowledges and accepts that the supply of Goods for accepted orders is subject to availability and if, for any reason whatsoever, Goods are not or cease to be available, DaRa reserves the right to vary the Price with alternative comparable Goods (or components of the Goods), as per clause 5.2, subject to the agreement of DaRa and the Client.
- 2.8 Once accepted by the Client, DaRa’s written quotation shall be deemed to interpret correctly the Client’s instructions. If DaRa receives any additional instructions by the Client (including but not limited to specifications, quantities, standards, rules or other requirements), DaRa reserves the right to decline any additional instructions or resultant order or to vary the supply including the Price after the acceptance of a quotation has been received.
- 2.9 These terms and conditions may be meant to be read in conjunction with either DaRa’s Hire Form, or Labour Hire Form, and:  
(a) where the context so permits, the terms ‘Goods’ or ‘Services’ shall include any supply of “Equipment”, “Labour” or “Candidate”, as defined therein; and  
(b) if there is any inconsistency between the documents then the terms and conditions contained in the Hire Form or Labour Hire Form shall prevail to the extent of such inconsistency.
- 2.10 Electronic signatures shall be deemed to be accepted by either party providing that the DaRa and the Client have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 3. Errors & Omissions

- 3.1 The Client acknowledges and accepts that DaRa 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 DaRa in the formation and/or administration of this Contract; and/or  
(b) contained/omitted in/from any literature (hard copy and/or electronic) supplied by DaRa in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of DaRa, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

**4. Change in Control**

4.1 The Client shall give DaRa 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 DaRa as a result of the Client's failure to comply with this clause.

**5. Price and Payment**

5.1 At DaRa's sole discretion, the Price shall be either:

- (a) as indicated on any invoice provided by DaRa to the Client; or
- (b) the Price as at the date of delivery of the Goods according to DaRa's current price list; or
- (c) DaRa'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 sixty (60) days.

5.2 DaRa 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) if during the course of the Services, the Goods cease to be available from DaRa's third party supplier, then DaRa reserves the right to provide alternative comparable Goods (or components of the Goods); or
- (d) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including but not limited to changes to the scope of the works, requests for additional drawings, or additional packaging) which are only discovered on or after commencement of the Services; or
- (e) in the event of increases to DaRa in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond DaRa's control.

5.3 Variations will be charged on the basis of DaRa's quotation, will be detailed in writing and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by DaRa within ten (10) working days. Failure to do so will entitle DaRa to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

5.4 At DaRa's sole discretion, a non-refundable deposit may be required.

5.5 Time for payment for the Goods is of the essence, and the Price will be payable by the Client on the date/s determined by DaRa, which may be:

- (a) before delivery of the Goods;
- (b) upon delivery of the Goods;
- (c) by way of instalments/progress payments in accordance with DaRa's payment schedule;
- (d) the date which is agreed upon by DaRa and the Client as being the date for payment; or
- (e) failing any notice to the contrary by DaRa, within thirty (30) days from the date of any invoice given to the Client by DaRa.

5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between DaRa and the Client.

5.7 For new Clients who have not previously ordered and paid for Goods from DaRa, DaRa may in its sole discretion require payment of the Price to occur by cash before or upon delivery of the Goods.

5.8 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 DaRa nor to withhold payment of any invoice because all or part of that invoice is disputed by the Client or as a result of any delay experienced in the Delivery of the Goods by DaRa.

5.9 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to DaRa an amount equal to any GST DaRa must pay for any supply by DaRa 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.

5.10 The time for Payment of the Price to DaRa is not conditional upon the Client receiving payment from the Client customer or any other person, customer, business or other entity.

**6. Delivery of Goods**

6.1 Delivery of the Goods ("Delivery") is taken to occur at the time that:

- (a) the Client or the Client's nominated carrier takes possession of the Goods at DaRa's address; or
- (b) DaRa (or DaRa's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.

6.2 At DaRa's sole discretion, the cost of delivery (for orders under the minimum threshold of one hundred dollars (\$100.00) excluding GST) is in addition to the Price.

6.3 The cost of packaging required for delivery in accordance with DaRa's standard practice is included in the Price. Any additional packaging requested by the Client or deemed necessary by DaRa at DaRa's sole discretion shall be invoiced as a variation in accordance with clause 5.2.

6.4 DaRa may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with these terms and conditions.

6.5 Any time specified by DaRa for delivery of the Goods is an estimate only and is not binding upon DaRa. DaRa and the Client agree that the parties shall make every reasonable endeavour to enable the Goods to be delivered at the time and place as arranged between the Client and DaRa. The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. DaRa will not be liable for any loss or damage incurred by the Client as a result of delivery being late or the Client not being present at the time of delivery. For avoidance of doubt, DaRa will not be liable for any loss incurred by the Client as a result of any person or entity (including but not limited to any electrician) waiting for any late delivery. In the event that DaRa is unable to deliver the Goods as arranged solely due to any action or

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inaction of the Client then DaRa shall be entitled to charge a reasonable fee for redelivery and/or storage (including but not limited to any insurance, demurrage, handling and other charges incidental to such storage).

### 7. Risk

- 7.1 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.
- 7.2 If any of the Goods are damaged or destroyed or altered in any way following delivery but prior to ownership passing to the Client, DaRa is entitled to receive all insurance proceeds payable for the Goods. The Client agrees that production of these terms and conditions by DaRa is sufficient evidence of DaRa's rights to receive the insurance proceeds without the need for any person dealing with DaRa to make further enquiries.
- 7.3 If the Client requests DaRa to leave Goods outside DaRa'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 and DaRa takes no responsibility as to loss of or damage to the Goods or the like.
- 7.4 In the event that the Client provides DaRa with any information and/or measurements relating to the supply of the Goods, DaRa shall be entitled to rely on the accuracy of any such information provided by the Client. The Client acknowledges and agrees that in the event that any such information provided by the Client is inaccurate, DaRa accepts no responsibility for any loss, damages, or costs however resulting from the supply of inaccurate measurements or other information.
- 7.5 The Client acknowledges that it is their sole responsibility to ensure that all Goods, plant or equipment which DaRa is to supply (or are to connect any of its Goods to) are of the correct type, size, rating, standard, quality, colour and finish, conform with all relevant Australian standards and state/local statutory requirements, and are as specified in the specifications, drawings and plans upon which DaRa based the quotation and the Client agrees to indemnify DaRa against any costs incurred by DaRa in rectifying such errors if required.
- 7.6 DaRa accepts no liability or responsibility for ensuring that the Goods or Services supplied to the Client are compliant with any relevant Australian standards or state or local statutory requirements.

### 8. Dimensions, Plans and Specifications

- 8.1 The Client acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in DaRa's or the manufacturer's fact sheets, price lists, advertising material or electronic media, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of this Contract, unless expressly stated as such in writing by DaRa; and
  - (b) all customary industry tolerances shall apply to the dimensions and specifications of the Materials, DaRa and the Client agree otherwise in writing; and
  - (c) while DaRa may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that DaRa has given these in good faith, and that they are estimates based on industry prescribed estimates, and that DaRa will not be liable for any damages or losses the Client experiences associated with the failure to attain such performance figures; and
  - (d) DaRa will provide up to two (2) drawings of the Goods for approval to commence the Services, and that any additional changes the Client instructs DaRa to perform beyond this will become a variation to the original quotation and will be charged at DaRa's normal hourly rate.
- 8.2 The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use and that all licences, certifications and approvals required for the Goods have been obtained by the Client at the Client's expense. By approving the drawings provided by DaRa, the Client consents to DaRa proceeding to source, manufacture and/or supply the Goods. Once the drawings provided by DaRa are approved by the Client, any changes subsequently requested by the Client will not be included in the Price and the Client will indemnify DaRa for any additional costs incurred by DaRa as a result of such changes.
- 8.3 Without prejudice to any of DaRa's rights at law and under the Contract, if the Client cancels an order at any time after the Client has approved the drawings provided by DaRa, the client will indemnify DaRa for any costs incurred by DaRa in relation to the order and will pay DaRa's invoice in respect of any costs (including but not limited to materials and labour) for work done to date by DaRa in connection with the order within thirty (30) days of such invoice being issued to the Client by DaRa.
- 8.4 DaRa may, at their sole discretion, provide certified drawings of the Goods upon request by the Client, and that all costs associated with such requests are at the Client's expense and will be treated as a variation in accordance with clause 5.2.

### 9. Compliance with Laws

- 9.1 The Client shall be solely responsible for and will obtain (at the expense of the Client) all licenses, certifications and approvals that may be required for the Goods or services to be installed.
- 9.2 All work will be tested by DaRa 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. Client will be solely responsible for and ensure that all cabling work complies with the Australian and New Zealand Wiring rules and check all connections and tightness of screws as they may come loose during transportation to site.
- 9.3 In the event that the Client requires any additional testing to be carried out either on site or at DaRa's premises, all costs associated with such testing shall be borne by Client. DaRa agrees to advise the Client by giving at least seven (7) days written notice of such costs prior to commencement of the testing.

### 10. Title

- 10.1 DaRa and the Client agree that ownership of the Goods shall not pass from DaRa to the Client until:
- (a) the Client has paid DaRa all amounts owing to DaRa; and
  - (b) the Client has met all of its other obligations under this Contract to DaRa.
- 10.2 Receipt by DaRa 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.
- 10.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 10.1:

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- (a) the Client is only a bailee of the Goods and must return the Goods to DaRa in the same condition as was delivered to the Client within 7 days from receipt of a verbal or written demand from DaRa;
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for DaRa and must pay to DaRa the proceeds of any and all insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Client remains fully liable for any outstanding Price for the Goods regardless of any payment made to DaRa in accordance with Clause 10.3(b) and will continue to be liable until the Client has paid to DaRa the full amount owing of the Price.
- (d) 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 DaRa and must pay or deliver the proceeds to DaRa on demand;
- (e) the Client agrees to do all things and sign all documents necessary to enter into legal binding contracts with the Client customer to ensure that the Client customer agrees to the following:
  - (i) that all right title and interest in the goods remain the sole property of DaRa;
  - (ii) that any installation of the goods by the Client on the Client customer's property does not convert the goods to a fixture status and does not form part of the real property;
  - (iii) DaRa has the absolute right to repossess all of the goods from the Client customer's property;
  - (iv) the Client customer authorises DaRa complete and unfettered access to remove the goods from the Client customer's property with the giving of 7 days notice to the Client customer.
- (f) the Client must not convert or process the Goods or intermix them with other goods. If the Client does so then the Client holds the resulting product on trust for the benefit of DaRa and must sell, dispose of or return the resulting product to DaRa as it directs;
- (g) the Client irrevocably authorises DaRa to enter any premises where DaRa believes the Goods are kept and recover possession of the Goods;
- (h) DaRa may recover possession of any Goods in transit whether or not delivery has occurred;
- (i) the Client must not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods; and
- (j) DaRa may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

### **11. Personal Property Securities Act 2009 ("PPSA")**

- 11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it under the PPSA.
- 11.2 DaRa and the Client acknowledge and agree that this Contract and 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 DaRa for Services that have previously been supplied and that will be supplied in the future by DaRa to the Client.
- 11.3 The Client agrees and 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 DaRa 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 DaRa's security interest on the Personal Property Securities Register;
    - (iii) ensure that the security interest is enforceable, perfected and otherwise effective;
    - (iv) register any other document required to be registered under the PPSA; and/or
    - (v) correct a defect in a statement referred to in clauses 11.3(a)(i)—11.3(a)(iv);
  - (b) indemnify, and upon demand reimburse, DaRa 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 DaRa;
  - (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 DaRa; and
  - (e) immediately advise DaRa 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.
- 11.4 DaRa 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.
- 11.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by DaRa, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Client must unconditionally ratify any actions taken by DaRa under clauses 11.3 to 11.5.
- 11.9 Subject to any express provisions to the contrary (including those contained in this clause 11) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### **12. Security and Charge**

- 12.1 In consideration of DaRa 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).
- 12.2 The Client indemnifies DaRa from and against all DaRa's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising DaRa's rights under this clause.
- 12.3 The Client irrevocably appoints DaRa and each director of DaRa as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

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12.4 If the Client is a corporate entity, its director/s and/or secretary/ies must sign personal guarantees and indemnities in respect of the Client's obligations if and when required by DaRa in favour of DaRa. Without prejudice to DaRa's other remedies at law DaRa shall be entitled enforce any personal guarantee and/or indemnity executed by the Customer, at the customer registration or otherwise. All guarantors shall be jointly and severally liable for performance of all of the Client's obligations under this Contract.

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

- 13.1 The Client must inspect the Goods immediately upon delivery, or in the event of delivery and installation by DaRa then immediately upon installation by DaRa, and must within seven (7) days of delivery, or in the event of delivery and installation by DaRa then within seven (7) days of installation by DaRa notify DaRa in writing of the particulars of any evident defect, damage, shortage in quantity, failure to comply with the description or quote or any claim that the Goods are not in accordance with the Contract. The Client must notify DaRa of 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 DaRa to inspect the Goods. If the Customer fails to give notice in accordance with this clause, then to the extent permitted by law the Goods are deemed to have been accepted by the Client and the Client must pay for the Goods in accordance with this Contract.
- 13.2 The Client must not set off against, deduct from the Price, fail to pay or delay payment of an invoice issued by DaRa where it alleges any defect/damage in the Goods or failure to comply with the description or quotation.
- 13.3 Under applicable State, Territory and Commonwealth Law (including but not limited to the CCA), certain statutory implied guarantees and warranties (including but not limited to the statutory guarantees under the CCA) may be implied into these terms and conditions ("Non-Excluded Guarantees").
- 13.4 DaRa acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.5 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, DaRa makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. DaRa's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.6 If the Client is a consumer within the meaning of the CCA, DaRa's liability is limited to the extent permitted by section 64A of Schedule 2 of the CCA.
- 13.7 If DaRa is required to replace the Goods under this clause or the CCA, but is unable to do so, DaRa may refund any money the Client has paid for the Goods.
- 13.8 If the Client is not a consumer within the meaning of the CCA, DaRa'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 DaRa at DaRa's sole discretion;
  - (b) limited to any warranty to which DaRa is entitled, if DaRa did not manufacture the Goods; and
  - (c) otherwise negated absolutely.
- 13.9 Subject to this clause 13, returns will only be accepted provided that:
- (a) the Client has complied with clause 13.1; and
  - (b) DaRa 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.
- 13.10 Notwithstanding clauses 13.1 to 13.9 but subject to the CCA, DaRa 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 DaRa; or
  - (e) fair wear and tear, any accident, or act of God.
- 13.11 Where Goods are supplied only on the basis of the manufacturers assembling and/or indent order, DaRa will not, unless agreed otherwise in writing, accept the Goods for return unless the Goods are subject to clause 13.1, thereby the Goods are deemed to be either faulty or have been wrongly delivered and do not meet the description of DaRa's drawings and/or DaRa's specification sheets signed off by the Client prior to manufacture.
- 13.12 DaRa may in its absolute discretion accept non-defective Goods for return in which case DaRa may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 13.13 Notwithstanding anything contained in this clause if DaRa is required by a law to accept a return then DaRa will only accept a return on the conditions imposed by that law.
- 13.14 Other than at its sole discretion or in accordance with this clause 13, DaRa will not accept any returns, refunds or apply any credits.
- 13.15 For avoidance of doubt, other than at its sole discretion or in accordance with this clause 13, DaRa will not accept returns, refunds or apply any credits in relation to any components or parts of any Goods supplied to the Client by DaRa.

### 14. Intellectual Property

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

### 15. Default and Consequences of Default

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- 15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at the penalty interest rate fixed from time to time pursuant to section 2 of the Penalty Interest Rates Act 1983 (Vic) after as well as before any judgment.
- 15.2 If the Client owes DaRa any money the Client shall indemnify DaRa from and against all costs and disbursements incurred by DaRa in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, DaRa's contract default fee, and bank dishonour fees).
- 15.3 Further to any other rights or remedies DaRa may have under this Contract, if a Client has made payment to DaRa, 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 DaRa under this clause 15 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.
- 15.4 Without prejudice to DaRa's other remedies at law DaRa shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to DaRa shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to DaRa becomes overdue, or in DaRa'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 DaRa;
  - (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.
- 16. Cancellation**
- 16.1 Without prejudice to any other remedies DaRa may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions DaRa may suspend or terminate the supply of Goods to the Client. DaRa will not be liable to the Client for any loss or damage the Client suffers because DaRa has exercised its rights under this clause.
- 16.2 DaRa 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 DaRa shall repay to the Client any money paid by the Client for the Goods. DaRa shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.3 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 DaRa as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 16.4 If DaRa breaches any of its obligations under this Contract then the Client may only terminate this Contract if:
- (a) the Client has notified DaRa of the alleged breach in writing; and
  - (b) DaRa has failed to remedy the default within 28 days of receiving the notice of default from the Client.
- 16.5 If the Client terminates this Contract in accordance with clause 16.4 then:
- (a) the Client shall pay any invoice issued by DaRa for work carried out by DaRa up to the date that this Contract is terminated; and
  - (b) DaRa shall only be liable to the Client for the costs the Client incurs to rectify DaRa's default up to a maximum amount equal to the payments of the Price paid to DaRa.
- 16.6 Notwithstanding any rights that the Client may have against DaRa, the Client shall not be entitled to withhold or set-off any amounts from any invoice issued by DaRa and must pay the monies owing under any invoice to DaRa without deduction, including but not limited to circumstances where there is a late Delivery of the Goods by DaRa.
- 17. Privacy Act 1988**
- 17.1 The Client agrees for DaRa to obtain from a credit reporting body (CRB) a credit report containing personal credit information (including but not limited to name, address, date of birth, occupation, previous credit applications, credit history) about the Client in relation to credit provided by DaRa.
- 17.2 The Client agrees that DaRa may exchange information about the Client with those credit providers and with related Persons 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 (2) years.
- 17.3 The Client consents to DaRa being given a consumer credit report to collect overdue payment on commercial credit.
- 17.4 The Client agrees that personal credit information provided may be used and retained by DaRa for the following purposes (and for other agreed purposes):
- (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.
- 17.5 DaRa 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.
- 17.6 The information given to the CRB may include:
- (a) personal information as outlined in clause 17.1;
  - (b) name of the credit provider and that DaRa 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

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the Client no longer has any overdue accounts and DaRa has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);

- (g) information that, in the opinion of DaRa, 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).

17.7 The Client shall have the right to request (by e-mail) from DaRa:

- (a) a copy of the information about the Client retained by DaRa and the right to request that DaRa correct any incorrect information; and
- (b) that DaRa does not disclose any personal information about the Client for the purpose of direct marketing.

17.8 DaRa will destroy personal information upon the Client's written request 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.

17.9 The Client can make a privacy complaint by contacting DaRa in writing. DaRa will take all reasonable steps to respond to such 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 Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

### 18. Unpaid Seller's Rights

18.1 Where the Client has left any item with DaRa for repair, modification, exchange or for DaRa to perform any other service in relation to the item and DaRa has not received or been tendered the whole of any monies owing to it by the Client, DaRa shall have, until all monies owing to DaRa 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.

18.2 The lien of DaRa shall continue despite the commencement of proceedings, or judgment for any monies owing to DaRa having been obtained against the Client.

### 19. Service of Notices

19.1 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; or
- (e) if sent by email to the other party's last known email address.

19.2 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.

### 20. Force Majeure

20.1 Neither party shall be liable for any delay or failure to carry out its obligations under this Contract caused by a Force Majeure Event provided that it promptly gives written notice of the occurrence of the Force Majeure Event relied on to the other party and uses all reasonable endeavours to remove or avoid the effect of such Force Majeure Event as promptly as practicable. If any Force Majeure Event is relied upon for longer than 90 days by either party under this clause the other shall be entitled to terminate this Contract on written notice without penalty.

### 21. General

21.1 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.

21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the Melbourne Courts in that state.

21.3 Subject to clause 13 DaRa 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 DaRa of these terms and conditions (alternatively DaRa's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

21.4 DaRa may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.

21.5 The Client cannot licence or assign without the written approval of DaRa.

21.6 DaRa 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 DaRa's sub-contractors without the authority of DaRa.

21.7 The Client agrees that DaRa 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 DaRa to provide Goods to the Client.

21.8 DaRa and the Client warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, that they are not insolvent and that this agreement creates binding and valid legal obligations on them.

21.9 The Client warrants that having regard to their financial records and conditions that it has assessed and considers that it is solvent and is able to pay all bills and outgoings as and when they fall due and payable and ability to enter into this Contract.