

1. Definitions

- 1.1 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **“FT”** means Falcon Tech Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Falcon Tech Pty Ltd.
- 1.3 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting FT 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 partnership, it shall bind each partner jointly and severally; and
(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 **“Services”** means all Goods (which includes any hardware or software, whether supplied from a third party or where custom developed or programmed for the Client, accessories or parts, etc.) and/or Services (which includes any advice or recommendations, installation of Goods, product support, etc.) provided by FT 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).
- 1.5 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using FT’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.7 **“Price”** means the Price payable (plus any GST where applicable) for the Goods as agreed between FT and the Client in accordance with clause 5 below.
- 1.8 **“GST”** means Goods and Services Tax 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 Services provided by FT.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with FT and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, FT reserves the right to refuse delivery.
- 2.6 The Client shall as soon as practicable make available to FT all information, documents, software, hardware, and other particulars required by FT for the provision of Services.
- 2.7 None of FT’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Director of FT in writing nor is FT bound by any such unauthorised statements.
- 2.8 Where FT gives any advice, recommendation, information, assistance or service provided by FT in relation to Services supplied is given in good faith to the Client or the Client’s agent and is based on FT’s own knowledge and experience and shall be accepted without liability on the part of FT. Where such advice or recommendations is not acted upon then FT shall require the Client or their agent to authorise commencement of the Services in writing. FT shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.9 Provided FT acts reasonably, they are entitled to assume that any request in connection with the Services that FT receives from the Client (or the Client’s agents, employees or contractors) or from the premises where the Services are being provided or accessed, is authorised by the Client.
- 2.10 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.11 These terms and conditions may be meant to be read in conjunction with FT’s ‘Service Maintenance Agreement’, and if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that FT 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 FT 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 FT 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 FT; 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 FT 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,

change of trustees, or business practice). The Client shall be liable for any loss incurred by FT as a result of the Client's failure to comply with this clause.

5. Price and Payment

- 5.1 At FT's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by FT to the Client; or
 - (b) FT'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 fourteen (14) days.
- 5.2 FT reserves the right to change the Price:
- (a) if a variation to the plan of scheduled Services, or Client specifications is requested (including, but not limited to, additional work required due to hidden or unidentifiable difficulties not evident prior to commencement of the Services, any request to investigate and/or repair any faults or defects outside FT's normal business hours);
 - (b) as a result of increases beyond FT's reasonable control in the cost of materials or labour (e.g. third-party network operator or supplier costs, etc.).
- 5.3 Variations will be charged for on the basis of FT's quotation, and will be detailed in writing, and shown as variations on FT's invoice. The Client shall be required to respond to any variation submitted by FT within ten (10) working days. Failure to do so will entitle FT 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 FT's sole discretion, a deposit may be required.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by FT, which may be:
- (a) on provision of the Services; or
 - (b) before or before delivery of the Goods;
 - (c) by way of instalments/progress payments in accordance with FT's payment schedule;
 - (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 FT.
- 5.6 Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and FT.
- 5.7 FT may in its discretion allocate any payment received from the Client towards any invoice that FT determines and may do so at the time of receipt or at any time afterwards. On any default by the Client FT may re-allocate any payments previously received and allocated. In the absence of any payment allocation by FT, payment will be deemed to be allocated in such manner as preserves the maximum value of FT's Purchase Money Security Interest (as defined in the PPSA) in 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 FT nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to FT an amount equal to any GST FT must pay for any supply by FT 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.

6. Provision of the Services

- 6.1 The Services are provided on the basis of specifications, information and instructions provided by the Client to FT (whether written or verbal). The Client acknowledges that it is their responsibility to ensure that such are detailed sufficiently to satisfy FT's requirements of interpretation and understanding, as once accepted by the Client, FT's quotation shall be deemed to interpret correctly those specifications, information and instructions. Therefore, FT shall not accept any liability for the supply of Services contrary to the Client's intention, or errors or omissions in the Services, due to insufficient or inadequate provision of detailed specifications, information and instructions by the Client or oversight or misinterpretation thereof, and FT may charge the Client additional costs incurred thereby in remedying the Services, and if reasonably practical, will notify the Client of such costs before they are incurred and the Client agrees to them.
- 6.2 Where the performance of any contract with the Client requires FT to obtain products and/or services from a third party, the contract between FT and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to FT, and the Client shall be liable for the cost in full including FT's margin of such products and/or services.
- 6.3 FT may supply Goods to the Client where it is required for the provision of Services, and
- (a) delivery of the Goods is taken to occur at the time that FT (or FT's nominated carrier) delivers the Goods to the Client's nominated address, even if the Client is not present at the address; and
 - (b) at FT's sole discretion, any costs of delivery shall be included in the Price; and
 - (c) FT may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions; and
 - (d) 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; and
 - (e) the Client may request upgrades to or newer versions of the Goods and FT will advise the Client of the availability of such Goods and the additional cost associated with the supply of the Goods.
- 6.4 Whilst FT shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties, the Client acknowledges that any time specified thereby for provision of the Services is an estimate only and FT will not be liable for any loss or damage incurred by the Client as a result of any delay. In the event that FT is unable to provide the Services as agreed solely due to any action or inaction of the Client then FT shall be indemnified from any liability for any resulting failure to provide the Services and/or entitled to charge a reasonable fee for re-providing the Services at a later time and date.

7. Repair Notice

- 7.1 If the Client is a consumer within the meaning of the CCA, this clause constitutes a Repair Notice given under the Australian Consumer Law (“ACL”), and the Client acknowledges that:
- (a) the repair of equipment may result in the loss of any files stored on the hard drive, etc. (“**User-Generated Data**”). It is the sole responsibility of the Client to back-up any User-Generated Data which they believe to be important, valuable, or irreplaceable prior to submitting the equipment for repair; and
 - (b) equipment presented for repair may be replaced by, or repaired with, refurbished Goods of the same type rather than being repaired.

8. Client’s Obligations

- 8.1 The Client shall:
- (a) cooperate with FT in connection with the provision of the Services, and provide full and free access to the Client’s premises, equipment and adequate working space and facilities, such as electrical outlets, within a reasonable distance from the equipment;
 - (b) obtain, keeps and make available to FT, machine readable copies of all programs, operating systems, drivers and data files relating to the equipment. FT does not assume any liability as a consequence of the Client’s inability to use its machine readable data;
 - (c) not modify, create any derivative work of, or incorporate any other goods into the network or any portion thereof. FT shall not be responsible for the maintenance of, or the repair of problems or malfunctions caused by any modifications of enhancements made by the Client or by anyone else other than FT.

9. Client’s Property and Materials

- 9.1 In the case of property and materials left with FT without specific instructions, FT shall be free to dispose of them at the end of three (3) months after FT receiving them and to accept and retain the proceeds, if any, to cover FT’s own costs in holding and handling them.
- 9.2 Where materials or equipment are supplied by the Client, FT accepts no responsibility for imperfect work caused by defects in or unsuitability of such materials or equipment.

10. Risk and Limitation of Liability

- 10.1 The Client acknowledges and agrees that FT shall not be held responsible or liable for:
- (a) any loss, corruption, or deletion of files or data (including, but not limited to software programmes) resulting from illegal hacking or Services provided by FT. Whilst FT will endeavour to restore files or data (at the Client’s cost), it is the sole responsibility of the Client to back-up any data as per clause 7.1(a). The Client accepts full responsibility for the Client’s software and data and FT is not required to advise or remind the Client of appropriate backup procedures;
 - (b) any loss or damage to the Client’s software or hardware caused by any ‘updates’ provided for that software;
 - (c) any unlicensed software, data loss or problems arising caused by the user or software.
- 10.2 FT, its directors, agents or employees will not be liable in any way for any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Client or any person related to or dealing with the Client out of, in connection with or reasonably incidental to the provision of Services by FT to the Client.
- 10.3 The Client agrees to defend, hold harmless and indemnify FT for any and all claims, causes of action, damages, demands, fines, liabilities and penalties arising out of the Client’s breach of any warranty made by the Client pursuant to this Contract. The Client further agrees to defend, hold harmless and indemnify FT for any and all claims, causes of action, damages, demands, fines, liabilities and penalties arising out of the Client’s negligent or reckless acts or omissions arising out of this Contract.
- 10.4 The Client acknowledges that it is the policy of FT to report all findings of illegal material (including, but not limited to, images and software) to the relevant authorities.

11. Title

- 11.1 FT and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid FT all amounts owing to FT; and
 - (b) the Client has met all of its other obligations to FT.
- 11.2 Receipt by FT 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.
- 11.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 11.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to FT on request;
 - (b) the Client holds the benefit of the Client’s insurance of the Goods on trust for FT and must pay to FT 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 FT and must pay or deliver the proceeds to FT 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 FT and must sell, dispose of or return the resulting product to FT as it so directs;
 - (e) the Client irrevocably authorises FT to enter any premises where FT believes the Goods are kept and recover possession of the Goods;
 - (f) FT 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 FT;
 - (h) FT may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

12. Personal Property Securities Act 2009 (“PPSA”)

- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2 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 FT for Services – that have previously been supplied and that will be supplied in the future by FT to the Client.
- 12.3 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 FT 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 12.3(a)(i) or 12.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, FT 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 FT;
 - (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 FT;
 - (e) immediately advise FT 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.
- 12.4 FT 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.
- 12.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by FT, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Client must unconditionally ratify any actions taken by FT under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge

- 13.1 In consideration of FT 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).
- 13.2 The Client indemnifies FT from and against all FT's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising FT's rights under this clause.
- 13.3 The Client irrevocably appoints FT and each director of FT as the Client's true and lawful attorney/s 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.

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

- 14.1 The Client must inspect FT's Services on completion (or Goods on delivery) and must within seven (7) days of Delivery notify FT 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 FT to inspect the Goods or review the Services provided.
- 14.2 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**).
- 14.3 FT acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, FT makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. FT's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Client is a consumer within the meaning of the CCA, FT's liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If FT is required to replace the Goods under this clause or the CCA, but is unable to do so, FT may refund any money the Client has paid for the Goods.
- 14.7 If the Client is not a consumer within the meaning of the CCA, FT'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 FT at FT's sole discretion;
 - (b) limited to any warranty to which FT is entitled, if FT did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 14.8 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) FT 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.
- 14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, FT 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 FT;
 - (e) fair wear and tear, any accident, or act of God.
- 14.10 Notwithstanding anything contained in this clause if FT is required by a law to accept a return then FT will only accept a return on the conditions imposed by that law.

15. Intellectual Property

- 15.1 Where FT has supplied the Client with computer software (including coding and routines) and/or has designed, drawn or developed Goods for the Client, FT retains full ownership of the computer software and/or the copyright in any designs and drawings and documents shall remain the property of FT, and FT hereby grants to the Client an irrevocable, non-exclusive and non-transferable licence to use the software (under the terms of the licence it was supplied) and/or Goods.
- 15.2 The Client warrants that all designs or instructions to FT will not cause FT to infringe any patent, registered design or trademark in the execution of the Client's order. Furthermore, the Client agrees to indemnify, defend, and hold FT harmless from all loss incurred or suffered by FT arising from any claims (including third party claims) or demands against them where such loss was caused by any infringement or alleged infringement of any person's intellectual property rights by the Client during the use of the Services.

16. Default and Consequences of Default

- 16.1 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 FT's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes FT any money the Client shall indemnify FT from and against all costs and disbursements incurred by FT in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, FT's contract default fee, and bank dishonour fees).
- 16.3 Further to any other rights or remedies FT may have under this Contract, if a Client has made payment to FT, 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 FT 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 Contract.
- 16.4 Without prejudice to FT's other remedies at law FT shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to FT shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to FT becomes overdue, or in FT'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 FT;
 - (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.

17. Cancellation

- 17.1 Without prejudice to any other remedies FT may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions FT may suspend or terminate the supply of Goods to the Client. FT will not be liable to the Client for any loss or damage the Client suffers because FT has exercised its rights under this clause.
- 17.2 FT 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 FT shall repay to the Client any money paid by the Client for the Goods. FT shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 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 FT as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 17.4 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.

18. Privacy Policy

- 18.1 All emails, documents, images or other recorded information held or used by FT is Personal Information, as defined and referred to in clause 18.3, and therefore considered Confidential Information. FT acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). FT acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by FT that may result in serious harm to the Client, FT will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 18.2 Notwithstanding clause 18.1, privacy limitations will extend to FT in respect of Cookies where the Client utilises FT's website to make enquiries. FT agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to FT when FT sends an email to the Client, so FT may collect and review that information ("collectively Personal Information")

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- If the Client consents to FT's use of Cookies on FT's website and later wishes to withdraw that consent, the Client may manage and control FT's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 18.3 The Client agrees that FT 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 (2) years.
- 18.4 The Client consents to FT being given a consumer credit report to collect overdue payment on commercial credit.
- 18.5 The Client agrees that personal credit information provided may be used and retained by FT 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.
- 18.6 FT 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.
- 18.7 The information given to the CRB may include:
- (a) Personal Information as outlined in 18.3 above;
 - (b) name of the credit provider and that FT 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 FT has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of FT, 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).
- 18.8 The Client shall have the right to request (by e-mail) from FT:
- (a) a copy of the Personal Information about the Client retained by FT and the right to request that FT correct any incorrect Personal Information; and
 - (b) that FT does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 18.9 FT 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 Contract or is required to be maintained and/or stored in accordance with the law.
- 18.10 The Client can make a privacy complaint by contacting FT via e-mail. FT will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 19. Unpaid Seller's Rights**
- 19.1 Where the Client has left any item with FT for repair, modification, exchange or for FT to perform any other service in relation to the item and FT has not received or been tendered the whole of any monies owing to it by the Client, FT shall have, until all monies owing to FT 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.
- 19.2 The lien of FT shall continue despite the commencement of proceedings, or judgment for any monies owing to FT having been obtained against the Client.
- 20. Service of Notices**
- 20.1 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.
- 20.2 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.
- 21. Trusts**
- 21.1 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 FT may have notice of the Trust, the Client covenants with FT as follows:

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- (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 FT (FT 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.

22. General

- 22.1 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.
- 22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which FT has its principal place of business, and are subject to the jurisdiction of the courts in Sydney, New South Wales.
- 22.3 Subject to clause 14, FT 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 FT of these terms and conditions (alternatively FT's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 22.4 FT may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 22.5 The Client cannot licence or assign without the written approval of FT.
- 22.6 FT 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 FT's sub-contractors without the authority of FT.
- 22.7 The Client agrees that FT may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to 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 FT to provide Goods to the Client.
- 22.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including, but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc., ("Force Majeure") or other event beyond the reasonable control of either party.
- 22.9 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.