

## OUR DISCLOSURES

Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled: to cancel your service contract with us; and to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to cancel your contract and obtain a refund for any unused portion of the contract and the goods. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

Our complete terms and conditions are contained below, but some important points for you to know before you become a customer are

- A. Our liability under these terms is limited as set out in clause 9.
- B. It is your responsibility to check the order details, including selected products, colours, installation details and pricing, before you submit your order.
- C. You are entitled to a cooling-off period of five business days, but please note that in most cases, your refund will be reduced by the full product price once we or the manufacturer has cut or dispatched your product. As products are commonly cut or dispatched within 24-48 hours of order acceptance, the practical window for a full refund is often less than 5 days. The product (without installation) will be supplied to you in that case. (Cooling-Off Period).
- D. During the Cooling-Off Period, you may cancel your order and receive a full refund of any amounts paid, less the price of the product. The price of the product will only be deducted when one or more of the following occurs.
  - 1. The manufacture has cut the product (non-stocked products).
  - 2. The manufacture has dispatched the product (non-stocked products).
  - 3. The product has been cut by us (stocked items).

Where your refund has been deducted the price of the product, you will be supplied the product as a supply only sale and it will not include installation.

- E. These Terms are incorporated into the Product-Specific Addendums for our products.
- F. Our products come with different limited warranty periods as set out in Clause 7.
- G. If you are a National Disability Insurance Scheme (NDIS) participant or require flooring for a Specialist Disability Accommodation (SDA) property (whether NDIS-funded or not) then please review the limitations of our service in clause 9 of these terms and conditions'.
- H. Nothing in these terms limit your rights under the Australian Consumer Law.
- I. Safety on the job and in your home/property during an installation is one of the foremost concerns for both us and our independent contractors. During the installation, our independent contractors may use power tools, because accidents with power tools can be critical, even disabling or even deadly, it is important you ensure that both your property and the installation areas are always kept clear during the installation. Please keep everyone away from the installation areas, especially children and pets.
- J. Depending on the floor you select, your installation may involve the use of adhesives (glue). Adhesives can be hard to see and are often transparent. Whilst an area in your home may appear to be clear, the floor may have adhesive on it. When adhesives come in direct contact with skin, they may cause irritation and other issues, adhesives can also cause damage to clothing and other areas in your home from residue collected when walked on and the adhesive has not yet cured (still wet). Please keep everyone away from the installation areas, especially children and pets.
- K. To ensure the continued safety for you, your family, and our independent contractors, we are unable to install your floors if there are other trades/contractors working at the property at the same time. Please consider this when discussing installation dates with our team.

- L. If you purchase products on a supply-only basis, or if installation is delayed because your property is not ready or you do not provide access, you must collect the products or make alternative arrangements within the timeframes set out in these Terms. If you do not do so, we may charge reasonable storage costs, require you to collect the products, cancel the order and/or deal with the products in accordance with these Terms and applicable law, including the Disposal of Uncollected Goods Act 1970 (WA).
- M. Products may be affected by extended storage, including by compression, colour variation, batch variation, temperature, humidity or other environmental conditions. Nothing in these Terms limits your rights under the Australian Consumer Law.
- N. From time to time, we may provide general referrals to third-party service providers. Those third parties are independent from us and you should make your own enquiries before engaging them.

## 1. INTRODUCTION

- (a) These terms and conditions (Terms) are between Trevors Carpets Willetton Pty Ltd (ACN 127 528 698) trading as Trevors Carpets Willetton (ABN 94 127 528 698) (we, our or us) and you, the person ordering and/or buying products from us.
- (b) You accept these Terms by placing an order with us in person, in store, via email or over the phone, as applicable.

## 2. ORDERS

- (a) When you place an order for products, you are making an order to purchase the product(s) for the price listed at the time of purchase (including applicable taxes, and/or services listed on your invoice, which may include installation) (**Order**). Your Order:
  - (1) products supplied only, where you are responsible for collection, transport, storage and installation unless otherwise agreed in writing (Supply Only Order); or
  - (2) products supplied and installed by us or our independent contractors, where installation is included in your invoice or quote (Supply and Install Order).
- (b) We may, at our absolute discretion, accept or reject an order. If we need to reject your order, we will notify you within a reasonable time after your order is placed. Once we accept an order, a binding agreement is formed for the supply and/or installation, where listed on your invoice of the products to you in accordance with these Terms.
- (c) It is your responsibility to check the order details, including selected products, colours, installation details and pricing, before you submit your order.
- (d) Before placing an order, you must review the product information, product specific addendum, manufacturer warranty terms and conditions and both our and the manufacturer's care and maintenance guides. These items should be read and considered in accordance with how you live in your home, your lifestyle, your decor, how much foot traffic will be on your selected product and if you have children and/or pets.
- (e) If you have used a product sample to help, make your selection, you acknowledge that samples may not indicate, show or make example of all variations in colour, grain, gum vein, features, knots, and texture. Every effort is taken to ensure samples provide you with an indication of the product you are purchasing. Samples can appear different in different lighting (e.g. showroom lights, sun, lights at home, lamps etc.) and these factors need to be considered when placing your order if selected from a sample. Variations will occur from batch to batch of the product you have ordered, and samples may differ. We recommend that you research your selected product in detail with your salesperson or the manufacturer, either by contacting them directly or using the resources available on their website.
- (f) If you have completed a Product Selection Sheet, as your floors are included as part of an offering, service or contract that is not offered by us, this selection is at the discretion of you as the Homeowner, and we encourage you to seek consultation with relevant professionals (e.g. your builder, designers, engineers, HVAC specialists, etc) before selecting.
- (g) We are not responsible for post-installation conditions outside our control, including but not limited to changes in your design plans, sun exposure, humidity, and/or temperature variation.
- (h) You acknowledge that window treatments, heating/cooling systems, ongoing building and/or ongoing maintenance may affect flooring performance. You acknowledge that, as window coverings are not always installed at time of flooring

installation, exposure to direct sunlight, high humidity and/or temperature variations may lead to damage of your floors and may not be covered by our installation warranty and/or the product warranty.

- (i) If a product is to be purchased in (Buy-In) also known as a non-stocked product, this will be indicated by us. We may display the date that the product is expected to be available for supply and/or installation to you. These dates are an approximation only, and we will not be liable for any delay in the product being available for pickup and/or installation or the inaccuracy of the date.
- (j) We may cancel, at any time before the pickup and/or installation and for whatever reason, an order that we have previously accepted, including where there is a considerable delay in supplying and/or installing your order, if for any reason we cannot supply or install the products you ordered (for example for an event beyond our reasonable control) or if products ordered were subject to an error (for example in relation to a description, price or image). We will contact you using the details you provided when you placed your order.
- (k) For Supply Only Orders, unless we agree otherwise in writing, you must collect the products within 60 calendar days after we notify you that the products are ready for collection.
- (l) If you do not collect the products within the timeframe in clause 2(k), we may contact you using the contact details you provided when placing your Order and require you to collect the products or make alternative arrangements within a further reasonable period specified by us.
- (m) If you do not collect the products or make alternative arrangements within the period specified in our notice, we may:
  - (1) charge you reasonable storage costs, provided those costs are notified to you before they are incurred;
  - (2) require you to arrange collection or third-party storage at your cost;
  - (3) cancel any unperformed services forming part of the Order; and/or
  - (4) deal with the products in accordance with applicable law, including the Disposal of Uncollected Goods Act 1970 (WA).
- (n) We will not treat products as abandoned, dispose of them, destroy them or resell them unless we have first given you reasonable written notice and complied with any applicable legal requirements.
- (o) For Supply and Install Orders, you must use reasonable endeavours to ensure the property is ready for installation on the agreed installation date, including by complying with these Terms and the applicable Product-Specific Addendum.
- (p) If installation is delayed because:
  - (1) your property is not ready for installation;
  - (2) you do not provide reasonable access;
  - (3) you ask us to delay installation; or
  - (4) you otherwise do not comply with these Terms or the applicable Product-Specific Addendum,

we may require you to arrange a new installation date, collect the products, arrange third-party storage at your cost, or pay reasonable storage costs notified to you in advance.

- (q) Unless we agree otherwise in writing, where you have paid a deposit or full payment to secure pricing for a Supply and Install Order, you must arrange installation within 12 months after the date of your Order. If installation has not occurred within that period due to your delay, we may give you written notice requiring you to arrange installation, collection or alternative storage within a reasonable period specified in the notice.
- (r) If you do not respond to our notice or make suitable arrangements within the period specified in the notice, we may cancel the unperformed part of your Order and deal with any products held by us in accordance with clause 6 and applicable law.
- (s) Where products are required for a Supply and Install Order, we may delay ordering, cutting or allocating products until a reasonable period before a confirmed installation date, including to reduce the risk of product deterioration, storage issues, batch variation, discontinuation or other supply issues. We will use reasonable endeavours to notify you if product availability changes.

- (t) If a product becomes unavailable or discontinued before installation, we will use reasonable endeavours to assist you to select an alternative product. If you select:
  - (1) an alternative product of equivalent value, we will apply the amounts paid by you towards that alternative product;  
or
  - (2) a higher-value product, you must pay the price difference before installation.
  - (3) Nothing in clauses 2(k) to 2(t) limits your rights under the Australian Consumer Law.

### 3. COOLING OFF PERIOD

- (a) Within two (2) business days of payment of the deposit or the full Price for a product, you will receive an email and/or a SMS message (if you have provided the relevant details) confirming your order. These messages will include a link to these Terms. If you do not receive this message, you must contact us and request a copy.
- (b) You are entitled to a cooling-off period of five business days from the date of making a deposit and/or paying the Price in full (Cooling-Off Period).
- (c) During the Cooling-Off Period, you may cancel your order and receive a full refund of any amounts paid, less the price of the product. The price of the product will only be deducted when one or more of the following occurs.
  - (1) The manufacturer has cut the product (non-stocked products).
  - (2) The manufacturer has dispatched the product (non-stocked products).
  - (3) The product has been cut by us (stocked items).

Where your refund has been deducted the price of the product, you will be supplied the product as a supply only sale and it will not include installation.

- (d) To cancel an order during the Cooling-Off Period, you must notify us in writing via email using the details at the end of this document.
- (e) If you cancel your order after the expiration of the Cooling-Off Period:
  - (1) we reserve the right to retain all amounts paid by you to the extent we have incurred costs, allocated or cut products, ordered non-stocked products, performed services, suffered loss or are otherwise entitled to do so at law, and we will refund any balance to you;
  - (2) any refund or partial refund after the Cooling-Off Period is at our sole discretion unless otherwise required by any applicable law, including the Australian Consumer Law.
- (f) Nothing in this clause limits your rights under the Australian Consumer Law or any other applicable law.

### 4. PRODUCT SPECIFIC ADDENDUMS

- (a) These Terms are incorporated into the Product-Specific Addendums for our products. Such addendums may include, but are not limited to:
  - (1) Things you should consider when selecting a product;
  - (2) instructions for proper product use;
  - (3) information about how to obtain manufacturer care instructions and other manufacturer warranty considerations;
  - (4) preparation requirements for the home, site or room, prior to product installation; and
  - (5) specific care instructions for the product.
- (b) In the event of any inconsistency between these Terms and Conditions and a Product-Specific Addendum, the Product-Specific Addendum shall prevail to the extent of the inconsistency.
- (c) You acknowledge and agree to comply with all instructions provided in the applicable Product-Specific Addendum. Failure to do so may result in:
  - (1) improper installation of the product;
  - (2) refusal of warranties provided by us and/or the manufacturer
  - (3) damage to the product or surrounding property; and/or
  - (4) additional costs being incurred.

- (d) You agree that you are solely responsible for any consequences arising from non-compliance with the Product-Specific Addendum, including but not limited to any damages or additional costs incurred and we charge you and issue further invoices for such costs.

## 5. PRICE AND PAYMENTS

- (a) You must pay us the purchase price of each product you order, plus any applicable service costs as set out on your invoice/quote (the Price) in accordance with this clause. All amounts are stated in Australian dollars and Australian GST (where applicable) will be set out separately. You must pay any customs duties or taxes charged on the Price.
- (b) If a deposit is applicable, you must pay the deposit upfront. Full payment of the Price is due no later than two (2) Business Days prior to installation of the products.
- (c) You must not pay, or attempt to pay, the Price by fraudulent or unlawful means. If you make a payment by debit card or credit card, you warrant that you are authorised to use the debit card or credit card to make the payment.
- (d) We may from time to time issue promotional discount codes for certain products. To claim the discount, you must state or enter the promotional discount code at the time of making your order. The conditions of use relating to promotional discount codes will be notified to you by us from time to time, and may be available on our website or in store.
- (e) We may also from time to time run competitions on social media. These competitions are subject to terms and conditions which will be made available on our website at the time of the competition.
- (f) Your price does not include (unless otherwise specified) any floor preparation services which may be required for the installation of your floors according to manufacturer requirements. Floor preparation services can be arranged between you and the independent contractor installing your floors.

## 6. TITLE AND RISK

- (a) Any installation dates stated are estimates only and are based on product availability, independent contractor (installer) availability, and other factors that may be outside of our control.
- (b) Title to the products will remain with us until you have paid the Price in full for the products. Until title passes, you must not do anything which seeks to create an encumbrance, lien, charge or other interest in or over the products.
- (c) Risk in the products will pass to you as soon as they are either picked up by you or delivered to the property detailed as the installation address that you provided in your order except to the extent any loss or damage is caused by our failure to comply with these Terms, our negligence, or any breach of your rights under the Australian Consumer Law.
- (d) If we agree to store products for you before collection or installation, we will take reasonable care to store and handle those products.
- (e) You acknowledge that extended storage may affect certain flooring products, including because of product compression, carpet crush marks, batch variation, colour variation, temperature, humidity, sunlight exposure, manufacturing characteristics, discontinued stock lines, or other environmental or product-specific factors.
- (f) Where products are stored by us for more than 60 calendar days after we notify you that they are ready for collection or installation, and the delay is caused or contributed to by you, we are not responsible for deterioration, damage, variation or loss caused by extended storage or factors outside our reasonable control, except to the extent caused by our negligence, breach of these Terms or breach of your rights under the Australian Consumer Law.
- (g) If products remain uncollected or installation remains delayed due to your act, omission or request, we may issue you a written notice requiring you to collect the products, arrange installation, pay reasonable storage costs, or make alternative arrangements within the period specified in the notice.
- (h) If you do not comply with a notice issued under clause 6(g), we may take one or more of the following steps:
  - (1) continue storing the products and charge you reasonable storage costs notified to you in advance;
  - (2) require you to collect the products or arrange third-party storage at your cost;
  - (3) cancel any unperformed services under the Order;
  - (4) set off any reasonable costs, losses or expenses we have incurred against any amount otherwise refundable to you, to the extent permitted by law; and/or
  - (5) deal with the products under the Disposal of Uncollected Goods Act 1970 (WA) or any other applicable law.

- (i) Before disposing of, destroying, reselling or otherwise dealing with uncollected products, we will take reasonable steps to notify you using the contact details you provided when placing your Order, which may include email, SMS and/or post.
- (j) You must promptly notify us if your contact details change. We are not responsible for any delay or failure in you receiving a notice if you have not provided us with current contact details.
- (k) Nothing in this clause 6 excludes, restricts or modifies your rights under the Australian Consumer Law or any other applicable law.

## **7. WARRANTY AGAINST DEFECTS**

- (a) In Australia, our goods come with guarantees which cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (b) In addition to any other rights you may have under the Australian Consumer Law, we provide our products with a 24-month Limited Warranty (Warranty) with the exception of Stair Nosing's, which come with a 24-month Limited Warranty.
- (c) Any advertised, offered or implied warranty beyond the initial period of our Warranty, is offered by the party making the offering (e.g. manufacturer) and does not form part of this Warranty and is provided solely by the party making the offer.
- (d) When making a warranty claim beyond the initial Warranty period, it is important that you have proof of purchase, so you can establish the manufacturer of the product, its original purchase date and installation date, and the site the product was installed at and/or purchased from. Please keep proof of purchase in the form of a receipt, bill, invoice or statement from the us, showing the price you paid and the date of its purchase, together with proof of installation address and date. Make sure you also know which product you have purchased and the warranty applicable to the product (details are on the back of samples in store at the time of purchase). We recommend that you register your warranty with the original manufacturer within 30 days of purchase and/or installation.
- (e) Where the manufacturer or other party makes of offer of a warranty above the out initial Warranty period offered by us, all claims must be directed to the manufacturer and/or other party.
- (f) This Warranty is only provided to the original purchaser of our products, or if the original purchaser is a builder or developer, to the owner of the residential home 12 months after purchase of our products and is not transferrable.
- (g) What is a defect? Our Warranty applies to any fault, error or defects in the products or installation (Defect).
- (h) What do you need to do to claim the Warranty? If, within the initial Warranty period from the date of pickup and/or installation of the products by our independent contractor, you believe you have a product that is subject of a Defect you must write to us via post to 187 High Rd, Willetton, WA, 6155 or via email (sales@trevorswilletton.com.au) providing photos, location and a description of the Defect.

All defect notices will be allocated a case number and initially assessed by our assessments team. Where an assessment is not able to be completed by the information you provide, it will be referred for an inspection by our inspection team. One or more inspections may be required by us and/or the products manufacturer to ascertain the cause of the defect and confirm the defect should be considered for a warranty claim.

When your case is assessed for a Warranty consideration, we use these Terms, the Product Specific Addendums and the manufacturer's warranty conditions to assist in the determination if the case has a valid claim under our Warranty, in accordance with all applicable laws. You should be familiar with these Terms, the Product Specific Addendums and the manufacturer's warranty conditions at the time of making a claim.

- (i) When your product is supplied without installation, the Warranty only applies to the product purchased and does not cover installation. To ensure the Warranty is maintained, you must have the product installed by a professional installer in accordance with the manufacturers installation instructions, available from the manufacturer directly.
- (j) What will we do if you make a successful claim under our Warranty? We will, at our own cost:

- (1) when the assessments team determine that the defect is minor, we will either repair or replace the product (the decision to repair or replace is at our sole discretion); or
  - (2) when the assessments team determine the defect is major and we are unable to repair the product, we will offer you a choice of a credit, refund, replacement or compensation as applicable to the Defect.
- (k) Damage not covered by our Warranty:
- (1) reasonable wear and tear;
  - (2) water damage (outside the product claims of water resistance by the manufacturer);
  - (3) sun damage from direct sunlight from windows;
  - (4) discolouration or slight differences between images of the product and the product in person; aesthetic blemishes;
  - (5) damage caused by:
    - I. improper maintenance, application of improper cleaning agents and/or failing to carry out proper routine maintenance in accordance with the recommendations described in the Product Specific Addendum, our or the manufacturer's care and maintenance guides;
    - II. exposure of the product to extreme cold (under 0°C) or extreme heat (over 40°C), excessive direct sunlight, weather or improper humidity in the environment or installation over subfloor heating;
    - III. exposure to excessive moisture (either to the surface or water/moisture trapped beneath the floor), moisture ingress from any source into the core or indentations or cleaning that is too wet;
    - IV. things ordinarily covered by homeowner insurance policies, such as accidents, burning, flooding, persistent moisture or smoke;
    - V. mechanical stress, abuse (being any use considered unreasonable given the normal and expected use of product in a residential home), sand, stones, dragged objects, heavy furniture, castor wheels, dropped items, burning, flooding, cutting, pet damage, smoke, exposure to very hot substances (other than most food or beverage spillages) or chemicals or industrial products (other than recommended cleaning products); or
    - VI. improper alterations to the original manufactured product.
- (l) This Warranty does not cover any defect which is caused (or partly caused) or contributed to, by any:
- (1) act or omission, accident, or negligence by you or any third party not engaged by us (including any third party installer);
  - (2) failure on your part to follow any instructions or guidelines (including any manual) provided by us, the manufacturer and/or your builder or properly maintain your products in accordance with any of our instructions or guidelines (including any product specific addendums made available with these Terms);
  - (3) continued use of the products (where such use is not reasonable) after any defect becomes apparent or would have become apparent to a reasonably prudent person;
  - (4) failure by you to notify us of any defect in the products within a reasonable period of time after you become aware of or ought to have reasonably become aware of the relevant defect;
  - (5) act of God or force majeure event (including but not limited to war, riot, invasion, act of terrorism, contamination, earthquake, flood, fire, or other natural disaster, or any other event or circumstance beyond our reasonable control); or
  - (6) installation, repair, replacement, maintenance, altering, overhauling or otherwise compromise of the products by you or any person other than us.
- (m) If you allege that we or our independent contractors caused damage to your property during installation or removal of existing flooring, you must notify us in writing as soon as reasonably practicable after you become aware of the alleged damage. To help us assess the matter, your notice should include:
- (1) photographs of the alleged damage, including photographs showing the surrounding area;
  - (2) a description of the alleged damage and affected area;
  - (3) your invoice or order number; and
  - (4) your contact details.

- (n) After receiving your notice, we may register the matter, request further information, arrange an inspection, and/or ask you to provide reasonable access so that we can assess the alleged damage.
- (o) If we accept responsibility for the damage, we must be given a reasonable opportunity to repair, arrange repair, or otherwise resolve the matter.
- (p) If you arrange or carry out repairs before giving us a reasonable opportunity to assess the alleged damage, we may be limited in our ability to assess the cause, extent and reasonable cost of the alleged damage. However, nothing in this clause limits your rights under the Australian Consumer Law or any other applicable law.
- (q) If the affected area, item or structure was not originally installed, built or maintained in accordance with applicable laws, standards or manufacturer requirements, we may take this into account when assessing whether we are responsible for the alleged damage and what remedy, if any, is reasonable in the circumstances.

## **8. AUSTRALIAN CONSUMER LAW**

- (a) We do not accept returns for change of mind or other circumstances. However, you may have rights to a repair, replacement or refund under the Australian Consumer Law.
- (b) Nothing in these Terms attempts to modify or exclude the conditions, warranties and undertakings, and other legal rights, under the Australian Consumer Law (Consumer Law Rights). Any and all other warranties or conditions which are not guaranteed by the Australian Consumer Law are expressly excluded where permitted, except to the extent such warranties and conditions are fully expressed in these Terms.

## **9. LIMITATIONS**

- (a) If you are a National Disability Insurance Scheme (NDIS) participant or require flooring for a Specialist Disability Accommodation (SDA) property (whether NDIS-funded or not), you acknowledge that we are not a registered provider under the NDIS and provide flooring installation services as an independent contractor. Our services are limited to the supply and installation of flooring materials as agreed upon in writing. No advisory or certification services are included, as our sales team are not designers, builders, engineers, or SDA assessors. While we attempt to ensure the product, you select is fit for purpose, our role is limited to product supply, and we rely solely on the information you provide. By proceeding, you:
  - (1) Confirm you have disclosed to us all relevant purpose and regulatory compliance requirements.
  - (2) Acknowledge you have considered your needs and selected a suitable product.
  - (3) Confirm the product has been reviewed by an SDA assessor, where required; and
  - (4) Acknowledge that we are not liable for any loss, damage, or penalties arising from non-compliance with NDIS/SDA standards where the requirements have not been clearly communicated by you to us in writing before installation.
- (b) Despite anything to the contrary, but subject to your Consumer Law Rights, to the maximum extent permitted by law:
  - (1) neither Party will be liable for Consequential Loss;
  - (2) each Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party, including any failure by that Party to mitigate its losses; and
  - (3) our aggregate liability for any Liability arising from or in connection with the Terms (including the products and/or the subject matter of the Terms) will be limited to, and must not exceed, the portion of the Price paid by you to us for the products subject of the relevant claim. This limitation does not apply to, and does not limit, any liability we have to you for breach of the consumer guarantees under the Australian Consumer Law (including any liability for reasonably foreseeable loss or damage under section 259(4)).
- (c) From time to time, our team members may provide general referrals, guidance or recommendations about third-party service providers, including for installation, cleaning, repairs, skirtings, ancillary products, rugs, mats or other related services. Unless we expressly agree otherwise in writing:
  - (1) those referrals, guidance or recommendations are general in nature only;
  - (2) the third-party service providers are independent from us and are not our employees, agents, subcontractors or representatives;

- (3) any contract for services is between you and the relevant third-party service provider;
  - (4) we do not control, supervise or guarantee the third-party service provider's work, availability, licences, insurance, compliance, warranties or suitability; and
  - (5) you should make your own enquiries before engaging a third-party service provider, including checking their qualifications, licences, insurance, warranties, reviews and terms and conditions.
- (d) Nothing in clause 9(c) limits our liability for any representation made by us that cannot be excluded by law, or for any services that we have expressly agreed in writing to provide to you.

## 10. GENERAL

- (a) **Disputes:** A Party may not commence court proceedings relating to a dispute without first meeting with the other Party to seek (in good faith) to resolve the dispute, failing which the Parties agree to engage a mediator to attempt to resolve the dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- (b) **Notices:** Any notice given under these Terms must be in writing addressed to us at the details set out below or to you at the details provided when you submitted your order or in your account. Any notice may be sent by standard post or email, and we may also send you an SMS notifying you that a notice has been sent by post or email. A notice will be deemed to have been serviced two Business Days after posting if sent by standard post, and at the time of transmission if sent by email, unless the sender receives an automated delivery failure notice.
- (c) **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under these Terms if such delay or failure is caused or contributed to by a Force Majeure Event, provided the Party seeking to rely on the benefit of this clause, as soon as reasonably practical, notified the other Party in writing about the Force Majeure Event and the extent to which it is unable to perform its obligations and uses reasonable endeavours to minimise the duration and adverse consequences of the Force Majeure Event.
- (d) **Feedback and complaints:** We are always looking to improve our services. If you have any feedback or a complaint, please notify us on our contact details below and we will take reasonable steps to address any concerns you have.
- (e) **Assignment:** You must not assign any rights or obligations under these Terms, whether in whole or in part, without our prior written consent.
- (f) **Amendment:** We may, at any time and at our discretion, vary these Terms by publishing varied terms on our website and/or notifying you via email, at our discretion. Prior to placing an order, we recommend you carefully read the terms that are in effect at that time to ensure you understand and agree to them. For any order that has been accepted by us, the terms and conditions that apply will be the ones that were in effect (and which you agreed to) when you placed your order unless you and we agree otherwise in writing or the variation does not materially prejudice your rights under the accepted order.
- (g) **Governing law:** These Terms are governed by the laws of Western Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Western Australia and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

## 11. DEFINITIONS

- (a) **Australian Consumer Law** means Schedule 2 to the Competition and Consumer Act 2010 (Cth).
- (b) **Business Day** means a day that is not a Saturday, Sunday or public holiday in Western Australia.
- (c) **Consequential Loss** means, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise; any loss or damage that cannot be considered to arise according to the usual course of things from the relevant breach, act or omission, whether or not such loss or damage may reasonably be supposed to have been in the contemplation of the Parties at the time they entered into these Terms as the probable results of the relevant breach, act or omission, and/or, any real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data. The Parties agree that your obligation to pay us the Price under these Terms will not constitute "Consequential Loss".
- (d) **Force Majeure Event** means any event or circumstance which is beyond a Party's reasonable
- (e) control.
- (f) **Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgement (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a party to these Terms or otherwise.
- (g) **Order** has the meaning given in clause 2(a).
- (h) **Supply and Install Order** has the meaning given in clause 2(a)(2).
- (i) **Supply Only Order** has the meaning given in clause 2(a)(1).

For any questions and notices, please contact us at:

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