

1. Definitions

- 1.1 “Tempright” means Temp Right Refrigeration Pty Ltd ATF Camilleri Family Trust T/A Temp Right Refrigeration Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Temp Right Refrigeration Pty Ltd ATF Camilleri Family Trust T/A Temp Right Refrigeration Pty Ltd.
- 1.2 “Customer” means the person/s or any person acting on behalf of and with the authority of the Customer requesting Tempright to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.3 “Works” means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by Tempright to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable (plus any GST where applicable) for the Works as agreed between Tempright and the Customer in accordance with clause 5 below.
- 1.5 “GST” means Goods and Services Tax (GST) as defined within the “A New Tax System (Goods and Services Tax) Act 1999” Cth.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and Tempright.
- 2.3 Any advice, recommendation, information, assistance or service provided by Tempright in relation to Materials and Works supplied is given in good faith, is based on Tempright’s own knowledge and experience and shall be accepted without liability on the part of Tempright and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Materials or Works.
- 2.4 In the event that Tempright is required to provide the Works urgently, that may require Tempright’s staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then Tempright reserves the right to charge the Customer additional labour costs (penalty rates will apply), unless otherwise agreed between Tempright and the Customer.
- 2.5 If Tempright has been requested by the Customer to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to the Customer irrespective of whether or not the repair goes ahead.
- 2.6 The Customer acknowledges and accepts that the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, Tempright reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 6.2 In all such cases Tempright will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer’s order on hold until such time as Tempright and the Customer agree to such changes.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties 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 and Omissions

- 3.1 The Customer acknowledges and accepts that Tempright 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 Tempright 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 Tempright in respect of the Works.
- 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 Tempright; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

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

5. Price and Payment

- 5.1 At Tempright’s sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by Tempright to the Customer in respect of Works performed or Materials supplied; or
 - (b) Tempright’s quoted Price (subject to clause 5.2) which shall be binding upon Tempright provided that the Customer shall accept Tempright’s quotation in writing within thirty (30) days.
- 5.2 Tempright reserves the right to change the Price:
 - (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, obscured site/building defects which require remedial work, health hazards and safety considerations (such as the discovery of asbestos), prerequisite work by any third party not being completed, hard rock barriers below the surface, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to Tempright in the cost of labour or materials which are beyond Tempright’s control.
- 5.3 Variations will be charged for on the basis of Tempright’s quotation, and will be detailed in writing, and shown as variations on Tempright’s invoice. The Customer shall be required to respond to any variation submitted by Tempright within ten (10) working days. Failure to do so

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will entitle Tempright 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 Tempright's sole discretion a non-refundable deposit may be required.
- 5.5 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by Tempright, which may be:
- (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with Tempright's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
 - (c) for approved Customers thirty (30) days following the end of the month in which a statement is emailed or posted to the Customer's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Tempright.
- 5.6 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Tempright.
- 5.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Tempright nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Tempright an amount equal to any GST Tempright must pay for any supply by Tempright under this or any other contract for the sale of the Materials. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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. Delivery of the Works

- 6.1 Subject to clause 6.2 it is Tempright's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 6.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Tempright claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Tempright's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify Tempright that the site is ready.
- 6.3 At Tempright's sole discretion, the cost of delivery is in addition to the Price.
- 6.4 Tempright may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Any time specified by Tempright for delivery of the Works is an estimate only and Tempright will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that Tempright is unable to supply the Works as agreed solely due to any action or inaction of the Customer, then Tempright shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

7. Risk

- 7.1 If Tempright retains ownership of the Materials under clause 12 then:
- (a) where Tempright is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either the Materials are delivered by Tempright or Tempright's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
 - (b) where Tempright is to both supply and install Materials then Tempright shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Customer.
- 7.2 Notwithstanding the provisions of clause 7.1 if the Customer specifically requests Tempright to leave Materials outside Tempright's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Customer's expense.
- 7.3 The Customer warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, pipes, cabling, etc.) are of suitable capacity to handle the Materials once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing, crawl spaces or inspection points), Tempright reasonably forms the opinion that the Customer's premises is not safe for the installation of Materials to proceed then Tempright shall be entitled to delay installation of the Materials (**in accordance with the provisions of clause 6.2 above**) until Tempright is satisfied that it is safe for the installation to proceed.
- 7.4 Whilst the final location of the condensing unit is at the discretion of the Customer, a charge will apply as a variation as per clause 5.2, if the Customer requests the unit to not be located adjacent to the external wall, due to the underground piping required.
- 7.5 Tempright shall upon installation ensure that all installed Materials meet current industry standards applicable to noise levels, however Tempright cannot guarantee that noise levels will remain constant post installation as the Materials may be impacted by many factors such as the weather, lack of maintenance, tampering etc.
- 7.6 In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Customer shall be responsible for any and all costs involved.
- 7.7 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Customer then the Customer agrees to notify Tempright immediately upon any proposed changes. The Customer agrees to indemnify Tempright against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 5.2.

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- 7.8 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Act, Regulations and Codes of Practice. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 7.9 Where the Customer has supplied materials for Tempright to complete the Works, the Customer acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. Tempright shall not be responsible for any defects in the materials, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of materials supplied by the Customer.
- 7.10 The Customer acknowledges that:
- (a) Tempright is only responsible for parts that are replaced by Tempright and that in the event that other parts/Materials, subsequently fail, the Customer agrees to indemnify Tempright against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising; and
 - (b) the Materials are made up of many moving components, Tempright has no control as to when other parts/Materials will subsequently fail even after being serviced, the Customer agrees to indemnify Tempright against any loss or damage that subsequently occurs; and
 - (c) it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- 7.11 It is recommended that the Materials be serviced every three (3) to six (6) months as per the manufacturer's recommendations, Tempright accepts no responsibility for any damage or performance related problems with any Materials where they have not been used and/or maintained in accordance with Tempright's and/or the manufacturers' recommendations.
- 7.12 The Customer acknowledges and agree that where Tempright has performed temporary repairs that:
- (a) Tempright offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (b) Tempright will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair.
- 7.13 The Customer acknowledges that Materials supplied may:
- (a) fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.
- 7.14 If Tempright notifies the Customer that it intends to store onsite Materials, plant, equipment or tools to be used in performance of the Works, then the Customer shall designate an area for storage and shall take all reasonable precautions to protect such items against destruction, damage, or theft. In the event that such items are destroyed, damaged or stolen then the cost of replacement shall be added to the contract Price and will be shown as a variation as per clause 5.2.
- 7.15 The Customer agrees to remove any furniture, furnishings or personal goods from the vicinity of the Works and agrees that Tempright shall not be liable for any damage caused to those items through the Customer's failure to comply with this clause.
- 7.16 The Customer shall be responsible for ensuring that the Materials ordered are suitable for their intended use.

8. Specifications

- 8.1 The Customer acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in Tempright's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer 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 the contract, unless expressly stated as such in writing by Tempright;
 - (b) while Tempright may have provided information or figures to the Customer regarding the performance of the Materials, the Customer acknowledges that Tempright has given these in good faith, and are estimates based on Clean Energy Council (CEC) and/or industry prescribed estimates.

9. Access

- 9.1 The Customer shall ensure that Tempright has clear and free access to the site at all times to enable them to undertake the Works. Tempright shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Tempright.

10. Underground Locations

- 10.1 Prior to Tempright commencing any work the Customer must advise Tempright of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 10.2 Whilst Tempright will take all care to avoid damage to any underground services the Customer agrees to indemnify Tempright in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.

11. Compliance with Laws

- 11.1 The Customer and Tempright shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 11.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.
- 11.3 If during the course of installation when the Works are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by Tempright, then Tempright shall notify the Customer immediately. The power, if isolated, will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Customer accepts and agrees that any costs associated with the rectification Works including any Materials and labour shall be to the Customer's account.
- 11.4 Any live Works or Works undertaken near live conductors where it is safe to do so shall be dealt with in accordance with Australian and New Zealand Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Commonwealth and Statutory Acts and Work

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Place Regulations". Tempright's live Works procedures are designed to eliminate risk of injury to Tempright's employees, damage to the Customer's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Works for which additional charges may be applicable. This shall be invoiced in accordance with clause 5.2.

11.5 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

12. Title

12.1 Tempright and the Customer agree that ownership of the Materials shall not pass until:

- (a) the Customer has paid Tempright all amounts owing to Tempright; and
- (b) the Customer has met all of its other obligations to Tempright.

12.2 Receipt by Tempright of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

12.3 It is further agreed that until ownership of the Materials passes to the Customer in accordance with clause 12.1:

- (a) the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Tempright on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for Tempright and must pay to Tempright the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
- (c) the production of these terms and conditions by Tempright shall be sufficient evidence of Tempright's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Tempright to make further enquiries.
- (d) the Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for Tempright and must pay or deliver the proceeds to Tempright on demand.
- (e) the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Tempright and must sell, dispose of or return the resulting product to Tempright as it so directs.
- (f) unless the Materials have become fixtures the Customer irrevocably authorises Tempright to enter any premises where Tempright believes the Materials are kept and recover possession of the Materials.
- (g) Tempright may recover possession of any Materials in transit whether or not delivery has occurred.
- (h) the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Tempright.
- (i) Tempright may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

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

13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

13.2 Upon assenting to these terms and conditions in writing the Customer 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 Materials and/or collateral (account) – being a monetary obligation of the Customer to Tempright for Works – that have previously been supplied and that will be supplied in the future by Tempright to the Customer.

13.3 The Customer 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 Tempright may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);
- (b) indemnify, and upon demand reimburse, Tempright 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 Materials charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of Tempright;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of Tempright;
- (e) immediately advise Tempright of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.

13.4 Tempright and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

13.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

13.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

13.7 Unless otherwise agreed to in writing by Tempright, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

13.8 The Customer shall unconditionally ratify any actions taken by Tempright under clauses 13.3 to 13.5.

13.9 Subject to any express provisions to the contrary (including those contained in this clause 13) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Security and Charge

- 14.1 In consideration of Tempright agreeing to supply the Materials, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Customer indemnifies Tempright from and against all Tempright's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Tempright's rights under this clause.
- 14.3 The Customer irrevocably appoints Tempright and each director of Tempright as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.

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

- 15.1 The Customer must inspect all Materials on delivery (or the Works on completion) and must within twenty four (24) hours of delivery notify Tempright in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Tempright to inspect the Materials or to review the Works provided.
- 15.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 15.3 Tempright acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Tempright makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. Tempright's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Customer is a consumer within the meaning of the CCA, Tempright's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If Tempright is required to replace any Materials under this clause or the CCA, but is unable to do so, Tempright may refund any money the Customer has paid for the Materials.
- 15.7 If Tempright is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then Tempright may refund any money the Customer has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Customer which were not defective.
- 15.8 If the Customer is not a consumer within the meaning of the CCA, Tempright's liability for any defect or damage in the Materials is:
 - (a) limited to the value of any express warranty or warranty card provided to the Customer by Tempright at Tempright's sole discretion;
 - (b) limited to any warranty to which Tempright is entitled, if Tempright did not manufacture the Materials;
 - (c) otherwise negated absolutely.
- 15.9 Subject to this clause 15, returns will only be accepted provided that:
 - (a) the Customer has complied with the provisions of clause 15.1; and
 - (b) Tempright has agreed that the Materials are defective; and
 - (c) the Materials are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 15.10 Notwithstanding clauses 15.1 to 15.9 but subject to the CCA, Tempright 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 Customer failing to properly maintain or store any Materials;
 - (b) the Customer using the Materials for any purpose other than that for which they were designed;
 - (c) the Customer continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Works by the Customer or any third party without Tempright's prior approval;
 - (e) the Customer failing to follow any instructions or guidelines provided by Tempright;
 - (f) fair wear and tear, any accident, or act of God.
- 15.11 Tempright may in its absolute discretion accept non-defective Materials for return in which case Tempright may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Materials plus any freight costs.
- 15.12 Notwithstanding anything contained in this clause if Tempright is required by a law to accept a return then Tempright will only accept a return on the conditions imposed by that law.

16. Intellectual Property

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

17. Default and Consequences of Default

- 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Tempright's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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- 17.2 If the Customer owes Tempright any money the Customer shall indemnify Tempright from and against all costs and disbursements incurred by Tempright in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Tempright's contract default fee, and bank dishonour fees).
- 17.3 Further to any other rights or remedies Tempright may have under this contract, if a Customer has made payment to Tempright, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Tempright under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.
- 17.4 Without prejudice to Tempright's other remedies at law Tempright shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Tempright shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Tempright becomes overdue, or in Tempright's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by Tempright;
 - (c) the Customer becomes insolvent or bankrupt, 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 Customer or any asset of the Customer.
- 18. Cancellation**
- 18.1 Without prejudice to any other remedies Tempright may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Tempright may suspend or terminate the supply of Works to the Customer. Tempright will not be liable to the Customer for any loss or damage the Customer suffers because Tempright has exercised its rights under this clause.
- 18.2 Tempright may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Customer. On giving such notice Tempright shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to Tempright for Works already performed. Tempright shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Customer cancels the delivery of Works the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Tempright as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.4 Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 19. Privacy Act 1988**
- 19.1 The Customer agrees for Tempright to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by Tempright.
- 19.2 The Customer agrees that Tempright may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 19.3 The Customer consents to Tempright being given a consumer credit report to collect overdue payment on commercial credit.
- 19.4 The Customer agrees that personal credit information provided may be used and retained by Tempright for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Works; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Works.
- 19.5 Tempright may give information about the Customer 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 Customer including credit history.
- 19.6 The information given to the CRB may include:
- (a) personal information as outlined in 19.1 above;
 - (b) name of the credit provider and that Tempright is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer'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 Customer no longer has any overdue accounts and Tempright has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of Tempright, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.7 The Customer shall have the right to request (by e-mail) from Tempright:
- (a) a copy of the information about the Customer retained by Tempright and the right to request that Tempright correct any incorrect information; and

- (b) that Tempright does not disclose any personal information about the Customer for the purpose of direct marketing.
- 19.8 Tempright will destroy personal information upon the Customer'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.
- 19.9 The Customer can make a privacy complaint by contacting Tempright via e-mail. Tempright 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 Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 20. Building and Construction Industry Security of Payment Act 2002**
- 20.1 At Tempright's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
- 20.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.
- 21. Unpaid Seller's Rights**
- 21.1 Where the Customer has left any item with Tempright for repair, modification, exchange or for Tempright to perform any other service in relation to the item and Tempright has not received or been tendered the whole of any monies owing to it by the Customer, Tempright shall have, until all monies owing to Tempright 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.
- 21.2 The lien of Tempright shall continue despite the commencement of proceedings, or judgment for any monies owing to Tempright having been obtained against the Customer.
- 22. Service of Notices**
- 22.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 23. Trusts**
- 23.1 If the Customer 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 Tempright may have notice of the Trust, the Customer covenants with Tempright as follows:
- (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - (b) the Customer 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 Customer against the Trust or the trust fund. The Customer 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 Customer will not without consent in writing of Tempright (Tempright will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.
- 24. General**
- 24.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which Tempright has its principal place of business, and are subject to the jurisdiction of the courts in Victoria.
- 24.3 Subject to clause 15 Tempright shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Tempright of these terms and conditions (alternatively Tempright's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 24.4 Tempright may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 24.5 The Customer cannot licence or assign without the written approval of Tempright.
- 24.6 Tempright may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Tempright's subcontractors without the authority of Tempright.
- 24.7 The Customer agrees that Tempright may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Tempright to provide Works to the Customer.

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- 24.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 24.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.