
John Glasper Airconditioning Pty Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 "J Glasper" means John Glasper Airconditioning Pty Limited ATF J D Glasper Family Trust T/A John Glasper Airconditioning Pty Limited, its successors and assigns or any person acting on behalf of and with the authority of John Glasper Airconditioning Pty Limited ATF J D Glasper Family Trust T/A John Glasper Airconditioning Pty Limited.
- 1.2 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting J Glasper to provide the Services 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 "Goods" means all Goods or Services supplied by J Glasper to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between J Glasper 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 the Goods.
- 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 agreement between the Customer and J Glasper.
- 2.3 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 & Omissions

- 3.1 The Customer acknowledges and accepts that J Glasper 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 J Glasper in the formation and/or administration of this contract; and/or
 - (b) contained/omitted in/from any literature (hard copy and/or electronic) supplied by J Glasper 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 J Glasper; 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 J Glasper 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, or business practice). The Customer shall be liable for any loss incurred by J Glasper as a result of the Customer's failure to comply with this clause.

5. Price and Payment

- 5.1 At J Glasper's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by J Glasper to the Customer; or
 - (b) J Glasper'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 thirty (30) days.
- 5.2 J Glasper reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, availability of Goods, limitations to accessing the site, safety considerations, discovery of asbestos, excavation, prerequisite work by any third party not being completed, obscured building defects, hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to J Glasper in the cost of labour or Goods which are beyond J Glasper's control.
- 5.3 Variations will be charged for on the basis of J Glasper's quotation, and will be detailed in writing, and shown as variations on J Glasper's invoice. The Customer shall be required to respond to any variation submitted by J Glasper within ten (10) working days. Failure to do so will entitle J Glasper 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 J Glasper's sole discretion, a non-refundable deposit may be required.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by J Glasper, which may be:
- (a) on delivery of the Goods; or
 - (b) by way of instalments/progress payments in accordance with J Glasper's payment schedule;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by J Glasper.
- 5.6 Payment may be made by cash, cheque, electronic/on-line banking, credit card excluding AMEX and Diners (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and J Glasper.
- 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 J Glasper 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 J Glasper an amount equal to any GST J Glasper must pay for any supply by J Glasper under this or any other agreement for the sale of the Goods. The Customer must

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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

- 6.1 Subject to clause 6.2 it is J Glasper's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.2 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that J Glasper claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond J Glasper'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 Services; or
 - (c) notify J Glasper that the site is ready.
- 6.3 Delivery of the Goods is taken to occur at the time that J Glasper (or J Glasper's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 6.4 At J Glasper's sole discretion, the cost of delivery is included in the Price.
- 6.5 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then J Glasper shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.6 J Glasper 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.
- 6.7 Any time specified by J Glasper for delivery of the Goods is an estimate only. The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. J Glasper will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. In the event that the Customer is unable to take delivery of the Goods as arranged then J Glasper shall be entitled to charge a reasonable fee for redelivery and/or storage.

7. Risk

- 7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, J Glasper is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by J Glasper is sufficient evidence of J Glasper's rights to receive the insurance proceeds without the need for any person dealing with J Glasper to make further enquiries.
- 7.3 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 Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 7.4 Where the Customer has supplied Goods for J Glasper to complete the Services, the Customer acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in the Goods. J Glasper shall not be responsible for any defects in the Goods, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of Goods supplied by the Customer.
- 7.5 The Customer acknowledges that J Glasper is only responsible for parts that are replaced by J Glasper, and in the event that other Goods, subsequently fail, the Customer agrees to indemnify J Glasper against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 7.6 Any advice, recommendation, information, assistance or service provided by J Glasper in relation to Goods or Services supplied is given in good faith, is based on J Glasper's own knowledge and experience and shall be accepted without liability on the part of J Glasper 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 Goods or Services.

8. Access

- 8.1 The Customer shall ensure that J Glasper has clear and free access to the work site at all times to enable them to undertake the Services. J Glasper 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 J Glasper.

9. Underground Locations

- 9.1 Prior to J Glasper commencing any work the Customer must advise J Glasper 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.
- 9.2 Whilst J Glasper will take all care to avoid damage to any underground services the Customer agrees to indemnify J Glasper 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 9.1.

10. Compliance with Laws

- 10.1 The Customer and J Glasper shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 10.2 All work is to be designed in accordance with the AS 1668.1, AS1668.2, AS1677, BCA and other relevant codes, acts or standards as required.
- 10.3 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 10.4 The Customer agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

11. Installation

- 11.1 The Customer warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) that J Glasper, its employees or J Glasper's reasonably form the opinion that the Customer's premises is not safe for the installation of Goods to proceed then J Glasper shall be entitled to delay installation of the Goods (in accordance with the provisions of clause 6.2 above) until J Glasper is satisfied that it is safe for the installation to proceed. J Glasper may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed but all such works undertaken and any additional Goods supplied shall be treated as a variation and be charged for in addition to the Price.
- 11.2 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.
- 11.3 The final location of the wall, window or floor unit must be determined on site by the Customer.
- 11.4 It is the Customer's responsibility to ensure they check the manufacturer's specifications in relation to the noise rating of the external unit. 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.
- 11.5 J Glasper shall upon installation ensure that all installed Goods meet current industry standards applicable to noise levels, however J Glasper cannot guarantee that noise levels will remain constant post installation as the Goods may be impacted by many factors such as the weather, lack of maintenance, tampering etc.
- 11.6 The Customer acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- 11.7 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 J Glasper immediately upon any proposed changes. The Customer agrees to indemnify J Glasper against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 5.2.

12. Customer's Responsibility

- 12.1 The Customer agrees that:
- (a) any building/construction sites will comply with all occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation; and
 - (b) J Glasper is not responsible for the removal of rubbish from the building/construction site/s. This is the responsibility of the Customer or the Customer's agent; and
 - (c) it is the Customer's responsibility to:
 - (i) provide J Glasper, while J Glasper is at the site, with adequate access to available water, toilet and washing facilities; and
 - (ii) make the premises available on the agreed date and time. If installation is interrupted by the failure of the Customer to adhere to the installation schedule agreed to between J Glasper and the Customer, any additional costs will be invoiced to the Customer as an extra; and
 - (iii) supply power and lighting to within ten (10) metres of the project; and
 - (iv) ensure the supervision and safety of all children and/or animals onsite.
 - (d) if J Glasper notifies the Customer that J Glasper intends to store on the site of the Services, materials and articles for use in the Services, the Customer shall designate an area for storage and shall take all reasonable precautions to protect any such materials and articles stored on site from destruction, damage or theft; and
 - (e) the Customer has ensured that the materials specified and accepted by the Customer are the correct type, size quantity, colour, finish quality and standard, and conform in every detail with the Customer's requirements; and
 - (f) the Customer has ensured that any specifications, diagrams, drawings and dimensions submitted with this quotation are correct and conform in every detail with the Customer's requirements stated by the Customer to J Glasper; and
 - (g) any description, specifications, diagrams, drawings and particulars of weights and dimensions submitted with this quotation are approximate only and do not form part of the contract; and
 - (h) the accuracy of specifications, diagrams, plans and drawings are the Customer's exclusive responsibility and the Customer does not rely on J Glasper's skill or judgement in this respect and J Glasper is entitled to rely on such documents but shall not be liable for any consequent error by J Glasper or the consequences of any error thereby arising.

13. Title

- 13.1 J Glasper and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid J Glasper all amounts owing to J Glasper; and
 - (b) the Customer has met all of its other obligations to J Glasper.
- 13.2 Receipt by J Glasper 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.
- 13.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 13.1 that the Customer is only a bailee of the Goods and must return the Goods to J Glasper on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for J Glasper and must pay to J Glasper the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for J Glasper and must pay or deliver the proceeds to J Glasper on demand.
 - (d) the Customer should not convert or process the Goods 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 J Glasper and must sell, dispose of or return the resulting product to J Glasper as it so directs.

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- (e) the Customer irrevocably authorises J Glasper to enter any premises where J Glasper believes the Goods are kept and recover possession of the Goods.
- (f) J Glasper may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Customer 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 J Glasper.
- (h) J Glasper may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

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

- 14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 14.2 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 Goods that have previously been supplied and that will be supplied in the future by J Glasper to the Customer.
- 14.3 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 J Glasper 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 14.3(a)(i) or 14.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, J Glasper 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 J Glasper;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of J Glasper;
 - (e) immediately advise J Glasper 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.
- 14.4 J Glasper 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.
- 14.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 14.7 Unless otherwise agreed to in writing by J Glasper, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.8 The Customer must unconditionally ratify any actions taken by J Glasper under clauses 14.3 to 14.5.
- 14.9 Subject to any express provisions to the contrary (including those contained in this clause 14) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

- 15.1 In consideration of J Glasper agreeing to supply the Goods, 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).
- 15.2 The Customer indemnifies J Glasper from and against all J Glasper’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising J Glasper’s rights under this clause.
- 15.3 The Customer irrevocably appoints J Glasper and each director of J Glasper as the Customer’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer’s behalf.

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

- 16.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify J Glasper 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 Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Customer must allow J Glasper to inspect the Goods.
- 16.2 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**).
- 16.3 J Glasper acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, J Glasper makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. J Glasper’s liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.5 If the Customer is a consumer within the meaning of the CCA, J Glasper’s liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.6 If J Glasper is required to replace the Goods under this clause or the CCA, but is unable to do so, J Glasper may refund any money the Customer has paid for the Goods.
- 16.7 If the Customer is not a consumer within the meaning of the CCA, J Glasper’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 Customer by J Glasper at J Glasper’s sole discretion;
 - (b) limited to any warranty to which J Glasper is entitled, if J Glasper did not manufacture the Goods;
 - (c) otherwise negated absolutely.

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- 16.8 Subject to this clause 16, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 16.1; and
 - (b) J Glasper has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer'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.
- 16.9 Notwithstanding clauses 16.1 to 16.8 but subject to the CCA, J Glasper 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 Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer 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 Customer failing to follow any instructions or guidelines provided by J Glasper;
 - (e) fair wear and tear, any accident, or act of God.
- 16.10 Notwithstanding anything contained in this clause if J Glasper is required by a law to accept a return then J Glasper will only accept a return on the conditions imposed by that law.

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 J Glasper's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Customer owes J Glasper any money the Customer shall indemnify J Glasper from and against all costs and disbursements incurred by J Glasper in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, J Glasper's contract default fee, and bank dishonour fees).
- 17.3 Without prejudice to any other remedies J Glasper may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions J Glasper may suspend or terminate the supply of Goods to the Customer. J Glasper will not be liable to the Customer for any loss or damage the Customer suffers because J Glasper has exercised its rights under this clause.
- 17.4 Without prejudice to J Glasper's other remedies at law J Glasper shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to J Glasper shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to J Glasper becomes overdue, or in J Glasper'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 J Glasper;
 - (c) the Customer 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 Customer or any asset of the Customer.

18. Cancellation

- 18.1 Without prejudice to any other remedies J Glasper may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions J Glasper may suspend or terminate the supply of Goods to the Customer. J Glasper will not be liable to the Customer for any loss or damage the Customer suffers because J Glasper has exercised its rights under this clause.
- 18.2 J Glasper 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 Customer. On giving such notice J Glasper shall repay to the Customer any money paid by the Customer for the Goods. J Glasper shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by J Glasper as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.4 Cancellation of orders for Goods 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 J Glasper 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 J Glasper.
- 19.2 The Customer agrees that J Glasper 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 years.
- 19.3 The Customer consents to J Glasper 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 J Glasper 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 Customer'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 Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 19.5 J Glasper may give information about the Customer to a CRB for the following purposes:

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- (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 J Glasper 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 J Glasper has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of J Glasper, 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 J Glasper:
- (a) a copy of the information about the Customer retained by J Glasper and the right to request that J Glasper correct any incorrect information; and
- (b) that J Glasper does not disclose any personal information about the Customer for the purpose of direct marketing.
- 19.8 J Glasper 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 agreement 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 J Glasper via e-mail. J Glasper 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. Unpaid Seller's Rights

- 20.1 Where the Customer has left any item with J Glasper for repair, modification, exchange or for J Glasper to perform any other service in relation to the item and J Glasper has not received or been tendered the whole of any moneys owing to it by the Customer, J Glasper shall have, until all moneys owing to J Glasper 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.
- 20.2 The lien of J Glasper shall continue despite the commencement of proceedings, or judgment for any moneys owing to J Glasper having been obtained against the Customer.

21. Building and Construction Industry Security of Payment Act 2002

- 21.1 At J Glasper's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
- 21.2 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.

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 J Glasper may have notice of the Trust, the Customer covenants with J Glasper 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 J Glasper (J Glasper 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.

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24. Dispute Resolution

- 24.1 If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference, each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

25. General

- 25.1 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.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which J Glasper has its principal place of business, and are subject to the jurisdiction of the courts in Victoria.
- 25.3 Subject to clause 16 J Glasper 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 J Glasper of these terms and conditions (alternatively J Glasper's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 25.4 J Glasper may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 25.5 The Customer cannot licence or assign without the written approval of J Glasper.
- 25.6 J Glasper 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 Customer agrees and understands that they have no authority to give any instruction to any of J Glasper's sub-contractors without the authority of J Glasper.
- 25.7 The Customer agrees that J Glasper 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 J Glasper to provide Goods to the Customer.
- 25.8 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.
- 25.9 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.