Flat Packs WA – Terms and Conditions of Trade

1. Definitions

1.1 "FP" means Flat Packs WA Pty Ltd (as trustee for The Rijax Family Trust) T/A Flat Packs WA, its successors and assigns or any person acting on behalf of and with the authority of Flat Packs WA Pty Ltd (as trustee for The Rijax Family Trust) T/A Flat Packs WA.

1.2 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting FP 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 partnership, it shall bind each partner jointly and severally; and
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Customer's executors, administrators, successors and permitted assigns.

1.3 "Goods" means all Goods or Services supplied by FP 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 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "**Personal Information**" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.

1.5 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**

1.6 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between FP and the Customer in accordance with clause 6 below.

1.7 "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 Goods, or accepts Delivery. Orders placed by the Customer with FP shall be considered valid when placing the order verbally and/or in writing.

2.2 These terms and conditions:
(a) constitute the entire contract made between the Customer and FP; and
(b) all prior discussions and negotiations are merged within this contract, and FP expressly waives all prior representations made by it, or on its behalf, that are in conflict with any clauses in this contract in any way; and
(c) may only be amended with the consent of both parties in writing; and
(d) shall prevail to the extent of any inconsistency with any other document or contract between the Customer and FP.

2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2011 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Orders

3.1 The Customer will ensure that, when placing an order, sufficient information is provided to enable FP to execute such order, and that FP is made aware of any special requirements pertaining to the order, and FP relies on the integrity of the information supplied to it.

3.2 FP takes no responsibility:
(a) if specifications provided by the Customer are wrong or inaccurate and the Customer will be liable for expenses incurred by FP in the event any additional work is required to rectify the order; and
(b) and will not be held liable for any damages or costs resulting in the Goods being faulty as a consequence of insufficient information provided by the Customer.

4. Errors and Omissions

4.1 The Customer acknowledges and accepts that FP 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 FP 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 FP in respect of the Services.

4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of FP; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

5. Change in Control

5.1 The Customer shall give FP 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 FP as a result of the Customer's failure to comply with this clause.

6. Price and Payment

6.1 At FP's sole discretion the Price shall:
(a) as indicated on any invoice provided by FP to the Customer; or
(b) FP's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

6.2 FP reserves the right to change the Price:
(a) if a variation to the Goods which are to be supplied is requested (including any applicable plans or specifications); or
(b) as a result of an increase in FP's costs due to circumstance beyond FP's control (e.g. the nominated address not being ready as per clause 7.4(b), or measurements provided by the Customer being incorrect, etc.); or
(c) where additional Services 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 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 such as plumbing or electrical services, change of design, unavailability of materials, or hidden pipes and cabling/wiring, etc.) which are only discovered on commencement of the Services; or
(d) in the event of increases to FP in the cost of labour or materials (including taxes and statutory charges, and fluctuations in currency exchange rates), which are beyond FP's control.

6.3 Variations will be charged for on the basis of FP's quotation, and will be detailed in writing, and shown as variations on FP's invoice. The Customer shall be required to respond to any variation submitted by FP within ten (10) working days. Failure to do so will entitle FP 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.

6.4 At FP's sole discretion, a non-refundable deposit may be required.

6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by FP, which may be:
(a) on, or before, Delivery; or
(b) the date specified on any invoice or other form as being the date for payment; or
(c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by FP.

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

6.7 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 FP nor to withhold payment of any invoice because part of that invoice is in dispute.

6.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to FP an amount equal to any GST FP must pay for any supply of Goods by FP under this contract, or any other contract. 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.

7. Delivery

7.1 Delivery of the Goods ("**Delivery**") is taken to occur at the time that:
(a) the Customer or the Customer's nominated carrier takes possession of the Goods at FP's premises; or
(b) FP (or FP's nominated carrier) delivers the Goods to the Customer's nominated address, even if the Customer is not present thereat.

7.2 At FP's sole discretion, the cost of Delivery is either included in, or in addition to, the Price;

7.3 FP 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.

7.4 Any time specified by FP for supply of Goods is an estimate only and FP will not be liable for any loss or damage incurred by the Customer as a result of any delay (including, but not limited, where due to inclement weather or circumstance beyond the control of FP). However, both parties agree that they shall make every endeavour to enable the Goods to be supplied at the time and place as was arranged between both parties. In the event that FP is unable to supply the Goods as agreed solely due to any event under clause 7.4 or any action or inaction of the Customer (including, but not limited to, any interference to the supply of Goods, or where no proper or safe access is provided to FP) then:
(a) FP shall be entitled to add to the Price a non-delivery fee, re-delivery fee, storage fee and any additional material and/or labour costs incurred by FP by reason of any delay in Delivery; and
(b) the date of Delivery will be put back by whatever time is reasonable in the event that FP claims an extension of time (by giving the Customer written notice) where Delivery is delayed by an event beyond FP's control, including but not limited to, any failure by the Customer to:
(i) make a selection; or
(ii) have the nominated address ready for the Goods; or
(iii) notify FP that the nominated address is ready.

Customer's Responsibilities

The Customer shall ensure that FP has clear and free access to the nominated address, and access to any necessary essential services, resources, equipment, materials and information, at all times to enable them to supply the Goods. FP shall not be liable for any loss or damage to the nominated address (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas), unless due to the negligence of FP.

The Customer and FP shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods, including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

Notwithstanding the provisions of clause 9.1, where FP requires that Goods, fittings and appliances, or plant and tools required therefor be stored at the nominated address, the Customer shall supply FP a safe area for storage and shall take all reasonable efforts to protect all items from possible destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Customer's responsibility.

The Customer shall obtain (at the expense of the Customer) all permits, and to mark out the site at the nominated address for the provision of any Services.

It is the Customer's responsibility to provide FP with facilities, as specified by FP, (including, but not limited to, a suitable free power and water source), and such facilities shall be compliant with all applicable statutes, regulations and by-laws.

Risk

Irrespective of whether FP retains ownership of the Goods under clause 10.1, 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.

If any of the Goods are damaged or destroyed following Delivery, but prior to ownership passing to the Customer, FP is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by FP is sufficient evidence of FP's rights to receive the insurance proceeds without the need for any person dealing with FP to make further enquiries.

If the Customer requests FP to leave Goods outside FP's premises for collection, or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.

The Customer acknowledges that variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations are inherent in the Goods (including but not limited to paint, timber, glass, granite, marble and man-made stones). Whilst FP will make every effort to match sales samples to, or batches between, the finished Goods FP shall not be liable for any loss, damages or costs howsoever arising resulting from any variation between different batches or where such samples differ to the finished Goods supplied.

Marble and Granite and man-made stones being porous products, oil and other similar substances are prone to causing discolouration and staining if left on surfaces for some time. The Customer agrees to indemnify FP against any damage occurring after delivery and installation.

The Customer acknowledges that Goods supplied may:
(a) fade or change colour over time; and
(b) expand, contract, twist, warp, or resent of exposure to heat, cold, weather; therefore, FP will accept no responsibility for gaps that may appear during prolonged dry periods; and
(c) mark or stain if exposed to certain substances; and
(d) be damaged or disfigured by impact or scratching.

Where FP is installing the Goods the Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and FP shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.

Where the contract does not include installation of Goods by FP, FP shall not be liable for any defect or damage resulting from incorrect or faulty installation.

Title

FP and the Customer agree that ownership of the Goods shall not pass until:
(a) the Customer has paid FP all amounts owing to FP; and
(b) the Customer has met all of its other obligations to FP under this or any other contract between FP and the Customer.

Receipt by FP 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, and until then FP's rights and ownership in relation to the Goods, and this contract, shall continue.

It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 10.1:
(a) the Customer is only a bailee of the Goods and must return the Goods to FP on request.
(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for FP and must pay to FP 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 FP and must pay or deliver the proceeds to FP 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 FP and must sell, dispose of or return the resulting product to FP as it so directs.
(e) the Customer irrevocably authorises FP to enter any address where FP believes the Goods are kept and recover possession of the Goods.
(f) FP 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 FP.
(h) FP may commence proceedings to recover the Price notwithstanding that ownership of the Goods has not passed to the Customer.

Personal Property Securities Act 2009 ("PPSA")

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

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:
(a) all Goods purchased, and that will be supplied in the future, by FP to the Customer;
(b) any monetary obligations owed by the Customer to FP for the provision of the Services.

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 FP 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 11.2(a)(i) or 11.2(a)(ii);
(b) indemnify, and upon demand reimburse, FP 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 registration made thereby;
(c) not register a financing change statement in respect of a security interest without the prior written consent of FP;
(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 FP;
(e) immediately advise FP 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.

FP 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.

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

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

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

The Customer must unconditionally ratify any actions taken by FP under clauses 11.2 to 11.5.

Subject to any express provisions to the contrary (including those contained in this clause 11) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

Security and Charge

In consideration of FP 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).

The Customer indemnifies FP from and against all FP's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising FP's rights under this clause.

The Customer irrevocably appoints FP and each director of FP as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf.

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

The Customer must inspect the Goods on Delivery and must within seven (7) days of such time notify FP 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 FP to inspect the Goods.

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**").

FP acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, FP makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. FP's liability in respect of these warranties is limited to the fullest extent permitted by law.

If the Customer is a consumer within the meaning of the CCA, FP's liability is limited to the extent permitted by section 64A of Schedule 2.

If FP is required to replace the Goods under this clause or the CCA, but is unable to do so, FP may refund any money the Customer has paid for the Goods.

If the Customer is not a consumer within the meaning of the CCA, FP'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 FP at FP's sole discretion;
(b) limited to any warranty to which FP is entitled, if FP did not manufacture the Goods;
(c) otherwise negated absolutely.

Subject to this clause 13, returns will only be accepted provided that:
(a) the Customer has complied with the provisions of clause 13.1; and
(b) FP 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.

Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, FP 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 FP;
(e) fair wear and tear, any accident, or act of God.

Notwithstanding anything contained in this clause if FP is required by a law to accept a return then FP will only accept a return on the conditions imposed by that law.

Intellectual Property

Where FP has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of FP. Under no circumstances may such designs, drawings and documents be used without the express written approval of FP.

The Customer warrants that all designs, specifications or instructions given to FP will not cause FP to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify FP against any action taken by a third party against FP in respect of any such infringement.

The Customer agrees that FP may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods to which FP has created for the Customer.

Default and Consequences of Default

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 FP's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

If the Customer owes FP any money the Customer shall indemnify FP from and against all costs and disbursements incurred by FP in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, FP's contract default fee, and bank dishonour fees).

Further to any other rights or remedies FP may have under this contract, if the Customer has made payment to FP by credit card, 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 FP under this clause 15 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.

Without prejudice to any other remedies FP may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions FP may suspend or terminate the supply of Goods to the Customer. FP will not be liable to the Customer for any loss or damage the Customer suffers because FP has exercised its rights under this clause.

Without prejudice to FP's other remedies at law, FP shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to FP shall, whether or not due for payment, become immediately payable if:
(a) any money payable to FP becomes overdue, or in FP'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 FP;
(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.

Cancellation

Without prejudice to any other remedies FP may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions FP may suspend or terminate the supply of Goods to the Customer. FP will not be liable to the Customer for any loss or damage the Customer suffers because FP has exercised its rights under this clause.

FP may cancel any contract to which these terms and conditions apply, or cancel Delivery at any time before the Goods are delivered, by giving written notice to the Customer. On giving such notice FP shall return to the Customer any money paid by the Customer for the Goods. FP shall not be liable for any loss or damage whatsoever arising from such cancellation.

In the event that the Customer cancels this contract, or Delivery, the Customer shall be liable for any and all loss incurred (whether direct or indirect) by FP as a direct result of the cancellation (including, but not limited to, any loss of profits).

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.

Privacy Policy

All emails, documents, images or other recorded information held or used by FP is Personal Information, as defined and referred to in clause 17.3, and therefore considered Confidential Information. The FP acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The FP acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by FP that may result in serious harm to the Customer, FP will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.

Notwithstanding clause 17.1, privacy limitations will extend to FP in respect of Cookies where transactions for purchases/orders transpire directly from FP's website. The FP agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
(a) IP address, browser, email client type and other similar details;
(b) tracking website usage and traffic; and
(c) reports are available to FP when FP sends an email to the Customer, so FP may collect and review that information ("collectively Personal Information")

In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via FP's website.

The Customer agrees for FP to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by FP.

The Customer agrees that FP 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.

The Customer consents to FP being given a consumer credit report to collect overdue payment on commercial credit.

The Customer agrees that personal credit information provided may be used and retained by FP 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.

The FP 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.

The information given to the CRB may include:
(a) Personal Information as outlined in 17.3 above;
(b) name of the credit provider and that FP 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 FP has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
(g) information that, in the opinion of FP, 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).

The Customer shall have the right to request (by e-mail) from FP:
(a) a copy of the Personal Information about the Customer retained by FP and the right to request that FP correct any incorrect Personal Information; and
(b) that FP does not disclose any Personal Information about the Customer for the purpose of direct marketing.

The FP 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.

The Customer can make a privacy complaint by contacting FP via e-mail. The FP 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

Construction Contracts Act 2004

At FP's sole discretion, if there are any disputes or claims for unpaid Goods then the provisions of the Construction Contracts Act 2004 may apply.

Nothing in this contract is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act where applicable.

Service of Notices

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.

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.

Trusts

If the Customer at any time upon or subsequent to entering into the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not FP may have notice of the Trust, the Customer covenants with FP 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 without consent in writing of FP (FP 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 of distribution of capital of the Trust; or
(iv) any resettlement of the trust property.

General

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.

These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia, the state in which FP has its principal place of business, and are subject to the jurisdiction of the courts in that state.

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

FP may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.

The Customer cannot licence or assign without the written approval of FP.

FP 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 FP's sub-contractors without the authority of FP.

The Customer agrees that FP may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to 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 FP to provide Goods to the Customer.

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.

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.

Please note that a larger print version of these terms and conditions is available from FP on request.

© Copyright – FP Credit Control 1999 - 2019 # 32742