

Total Wireless Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 “Contract” means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “TW” means Total Wireless Limited, its successors and assigns or any person acting on behalf of and with the authority of Total Wireless Limited.
- 1.3 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting TW to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 “Goods” means all Goods (which includes any goods, hardware, files, information, printed or virtual material, data or software) or Services (which includes any installation and/or repair of Goods or components, advice or recommendations, support services, assessment and treatment planning, reporting, technical service and support, analysis, training, and project management or service sourcing) supplied by TW to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 “Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Services via the website.**
- 1.7 “Price” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Services as agreed between TW and the Client in accordance with clause 7 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Services.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges:
- (a) that the supply of Goods on credit shall not take effect until the Client has completed a credit application with TW and it has been approved with a credit limit established for the account; and
 - (b) in the event that the supply of Goods request exceeds the Clients credit limit and/or the account exceeds the payment terms, TW reserves the right to refuse delivery; and
 - (c) accepts that:
 - (i) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, TW reserves the right to alternate Goods and vary the Price as per clause 7.2, subject to prior confirmation and agreement of both parties. In all such cases TW will notify the Client in advance of any such substitution, and also reserves the right to place the Client’s order on hold until such time as TW and the Client agree to such changes. TW shall not be liable to the Client for any loss or damage the Client suffers due to TW exercising its rights under this clause;
 - (ii) the Client will ensure that TW is given such information and assistance (including remote access (where required) to any computer systems plus usernames and passwords or any other locations) as TW reasonably requires to enable TW to complete any necessary Services. Failure to provide these prior to the provision of the Services by TW, may incur additional time delay and surcharge added to the initial quoted cost or estimate.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.6 If TW has been requested by the Client to:
- (a) prepare a quotation that involves multiple site visits or third party involvement (including but not limited to engineers, surveyor or local councils) all costs involved will be charged to the Client irrespective of whether or not the Services go ahead; or
 - (b) diagnose a fault that requires disassembly and/or testing all costs involved (including a call-out fee where such a request is received outside TW’s normal working hours and/or a physical visit is required) will be charged to the Client.
- 2.7 The Client acknowledges and agree that where TW has performed temporary repairs on the Goods that:
- (a) TW offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (b) TW will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair of the Goods.
- 2.8 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on TW’s website. If there are any inconsistencies between two documents then the terms and conditions contained in this document shall prevail.

3. Fixed Term Contracts

- 3.1 The commencement date shall be the date of the first delivery of the Services under a Service Agreement, or from the date of signing, whichever, is the earlier. A Service Agreement shall be for the period (“Initial Term”) as agreed between both parties and shall revert to an annual roll over month to month basis automatically, thereafter, unless agreed otherwise until terminated by either party by giving at least one (1) months’ required notice as defined in the Service Agreement prior to the expiration date of the Initial Term or any additional term.

4. Authorised Representatives

- 4.1 Unless otherwise limited as per clause 4.2 the Client agrees that should the Client introduce any third party to TW as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods or Services on the Client's behalf and/or to request any variation to the Services on the Client's behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies TW in writing that said person is no longer the Client's duly authorised representative).
- 4.2 In the event that the Client's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise TW in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Client specifically acknowledges and accepts that they will be solely liable to TW for all additional costs incurred by TW (including TW's profit margin) in providing any Goods, Services or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

5. Errors and Omissions

- 5.1 The Client acknowledges and accepts that TW 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 TW 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 TW in respect of the Services.
- 5.2 In the event such an error and/or omission occurs in accordance with clause 5.1, and is not attributable to the negligence and/or wilful misconduct of TW; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

6. Change in Control

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

7. Price and Payment

- 7.1 At TW's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by TW to the Client in respect of Services performed or Goods supplied; or
 - (b) TW's estimated Price (subject to clause 7.2). The final price can only be ascertained upon completion of the Services. Variances in the estimated Price of more than ten percent (10%) will be subject to Client approval before proceeding with the Services; or
 - (c) TW's quoted Price (subject to clause 7.2) which shall be binding upon TW provided that the Client shall accept TW's quotation in writing within thirty (30) days.
- 7.2 TW 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, including any additional costs incurred by TW where the Client requests the acceleration of the existing work schedule (as per clause 8.3); or
 - (c) if during the course of the Services, the Goods are not or cease to be available from TW's third party suppliers, then TW reserves the right to provide alternative Goods; or
 - (d) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including but not limited to, poor weather conditions, obscured building defects which require remedial work, limitations to accessing the site and/or crawl spaces, Client's fixings are not fit for purpose and require repairs to enable installation of the Goods, availability of machinery, scaffolding required, safety considerations and/or health hazards (such as the discovery of asbestos or other hazardous materials), prerequisite work by any third party not being completed or code compliant, delays caused by third party contractors or hidden pipes or wiring in walls etc.) which are only discovered on commencement of the Services; or
 - (e) in the event of increases to TW in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges, or travel charges where there is more than one (1) site location) which are beyond TW's control.
- 7.3 Variations will be charged for on the basis of TW's quotation, and will be detailed in writing, and shown as variations on TW's invoice. The Client shall be required to respond to any variation submitted by TW within ten (10) working days. Failure to do so will entitle TW 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.
- 7.4 At TW's sole discretion a non-refundable deposit may be required.
- 7.5 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by TW, which may be:
- (a) before delivery of the Goods; or
 - (b) on completion of the Services; or
 - (c) by way of progress payments in accordance with TW's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the worksite but not yet installed;
 - (d) for certain approved Client's, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by TW.
- 7.6 Payment for any custom non-stocklist Goods from TW's third party suppliers is due a payable at the time the Client places an order with TW.
- 7.7 Payment may be made by eftpos, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and TW.
- 7.8 TW may in its discretion allocate any payment received from the Client towards any invoice that TW determines and may do so at the time of receipt or at any time afterwards. On any default by the Client TW may re-allocate any payments previously received and allocated. In the absence of any payment allocation by TW, payment will be deemed to be allocated in such manner as preserves the maximum value of TW's Purchase Money Security Interest (as defined in the PPSA) in the Goods.

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- 7.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by TW nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to TW an amount equal to any GST TW must pay for any supply by TW under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

8. Provision of the Services

- 8.1 Subject to clause 8.2 it is TW's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 8.2 The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that TW claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond TW's control, including but not limited to:
- (a) forecast weather conditions (including without limitation, extreme temperatures); or
 - (b) delays caused by any other third party contractor engaged by the Client; or
 - (c) failure by the Client to:
 - (i) make a selection; or
 - (ii) notify TW:
 - (A) of any changes to the site/location; or
 - (B) that the site/location or vehicle is available to commence the Services.
- 8.3 At TW's sole discretion the cost of delivery is in addition to the Price.
- 8.4 In the event that TW is required to provide the Services urgently, that may require TW staff to work outside normal working hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then TW reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between TW and the Client.
- 8.5 Any time specified by TW for delivery of the Services is an estimate only and TW will not be liable for any loss or damage incurred by the Client as a result of delivery being late subject to clause 8.2. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that TW is unable to supply the Services as agreed solely due to any action or inaction of the Client (including where the Client provides less than twenty-four (24) hours' written notice to delay the agreed commencement date), then TW shall be entitled to:
- (a) charge a reasonable fee for redelivery and/or storage; or
 - (b) subject to clause 22, terminate the Contract.

9. Online Ordering

- 9.1 The Client acknowledges and agrees that:
- (a) TW does not guarantee the websites performance or availability of any of its Goods; and
 - (b) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades; and
 - (c) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by TW;
 - (d) there are inherent hazards in electronic distribution, and as such TW cannot warrant against delays or errors in transmitting data between the Client and TW including orders, and you agree that to the maximum extent permitted by law, TW will not be liable for any losses which the Client suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
 - (e) when making a transaction through the website, the Client's information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by TW and/or displayed on the website. The encryption process ensures that the Client's information cannot be read by or altered by outside influences;
 - (f) if the Client is not the cardholder for any credit card being used to pay for the Goods, TW shall be entitled to reasonably assume that the Client has received permission from the cardholder for use of the credit card for the transaction.
- 9.2 TW reserves the right to terminate your order if it learns that you have provided false or misleading information, interfered with other users or the administration of TW's Services, or violated these terms and conditions.

10. Risk

- 10.1 Risk of damage to or loss of the Goods passes to the Client on delivery and the Client must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that either:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at TW's address; or
 - (b) the Goods are delivered by TW or TW's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- 10.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, TW is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by TW is sufficient evidence of TW's rights to receive the insurance proceeds without the need for any person dealing with TW to make further enquiries.
- 10.3 If the Client requests TW to leave Goods outside TW's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 10.4 Where TW gives advice or recommendations to the Client, or the Client's agent, regarding any aspect of the scope of the Services (including but not limited to, a particular course of action, product selection or the condition of materials supplied by the Client being inferior), and such advice or recommendations are not acted upon, then TW:
- (a) shall require the Client or their agent to authorise commencement of the Services in writing. TW shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services nor will such losses or damages be deemed a defect; and
 - (b) any cost incurred by TW with any subsequent repair Services that are required as a result of such advice or recommendations not being followed (at the Client's request) will be on-charged to the Client in accordance with clause 7.2.
- 10.5 The Client 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

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- to handle the Goods once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, dangerous access to crawl spaces and/or roofing or fixings are found to not be suitable for their intended use), that TW reasonably forms the opinion that the Client's premises is not safe for the installation of Goods to proceed then TW shall be entitled to delay installation of the Goods (in accordance with clause 8.2) until TW is satisfied that it is safe for the installation to proceed. TW may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed but all such Services undertaken and any additional Goods supplied shall be treated as a variation and be charged for in addition to the Price. TW shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises be unable to accommodate the installation.
- 10.6 TW shall upon installation ensure that all Goods are to be installed in a manner that is fully compliant with industry standards. If, for any reason, the Client specifically requires the Goods to be installed in any way which goes against TW's recommendations and/or falls below industry standards; a request detailing that requirement must be made in writing to TW. Accordingly, TW offers no warranty in regards to the aforementioned.
- 10.7 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.
- 10.8 In the event that the electrical wiring is required to be re-positioned at the request of any third-party contracted by the Client then the Client agrees to notify TW immediately upon any proposed changes. The Client agrees to indemnify TW against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 7.2.
- 10.9 Where the Client has supplied materials for TW to complete the Services, the Client acknowledges that they accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. TW shall not be responsible for any defects in the Services, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 10.10 The Client acknowledges that TW is only responsible for parts that are repaired by TW, and in the event that other parts/goods, subsequently fail, the Client agrees to indemnify TW against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 10.11 The Client acknowledges that:
- (a) TW does not guarantee the performance or transmission speed or quality of any data; and
 - (b) transmission of data may be unavailable from time to time due to scheduled maintenance and/or upgrades to websites, servers or networks by third parties; and
 - (c) there are inherent hazards in electronic distribution (including, but not limited to electrical interference, surges or spikes, high traffic volume affecting speed, etc.) and as such TW cannot warrant against delays or errors in transmitting data between the Client and any person or entity the Client conducts communications with including orders, and you agree that TW will not be liable for any losses which the Client suffers as a result of delays or errors in transmitting orders or other communications and/or documents; and
 - (d) they are (for all purposes) solely responsible for the migration of all files and data (regardless of their format). TW shall not be held responsible or liable for any loss, corruption, or deletion of files or data (including, but not limited to the software) resulting from illegal hacking or mislabelling or misfiling; and
 - (e) where CCTV systems, intrusion alarms and/or access control systems are installed to/at their premises that they are for monitoring and detection purposes only and TW does not represent that the Goods will protect the Client against break and enter, theft and/or burglary and therefore accepts no liability if such is to occur after installation; and
 - (f) TW cannot guarantee performance and/or the quality of any CCTV footage and/or discrepancies in camera motion detection and TW shall not be liable for the failure of the equipment to be triggered to record due to the equipment being either under or over sensitive; and
 - (g) accepts that the Goods shall comply with all applicable standards and/or regulations and that it shall be the Client's responsibility to ensure correct operating procedures are followed so as to not interfere with other communications operators within the transmitting/receiving area;
 - (h) it is their responsibility to ensure that all Goods, plant or equipment which TW is to supply (or are to connect any of its Goods to) are of the correct type, size, rating, standard, quality, colour and finish, conform with all relevant Australian and New Zealand standards and local statutory requirements, and are as specified in the specifications, drawings and plans upon which TW based the quotation on and therefore, the Client agrees to indemnify TW against any costs incurred by TW in rectifying such errors if required;
 - (i) all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in TW's or the manufacturer's fact sheets, price lists or advertising material are indicative only and that they have not relied on such information; and
 - (j) while TW may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that TW has given these in good faith, and are estimates based on optimal operating conditions. The coverage range may be less than estimates due to factors out of TW's control including, but not limited to, atmospheric conditions, the location (geographical or otherwise) of the Goods and the location of surrounding structures and flora.
- 10.12 TW:
- (a) shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, TW accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information;
 - (b) accepts no responsibility for:
 - (i) any damage or performance related problems with any Goods where they have not been used and/or maintained in accordance with TW's and/or the manufacturers' recommendations;
 - (ii) any damage or defects in any Goods caused by movement and/or interference of the said Goods;
 - (iii) painting, re-decorating, re-sealing, carpentry or any other Services required for the restoration or making good of any surface/area where any Services have been carried out.
 - (c) shall not be liable whatsoever for:
 - (i) any loss or damage to the Services that is caused by any other tradesman during and after the completion of the Services; or
 - (ii) delays caused by any other third party contractors that impacts on the provision of the Services by TW;
 - (iii) products and/or works supplied by the Client and/or any other third party; and
 - (iv) any defect or damage resulting from incorrect or faulty installation carried out by any other third party; and
- 10.13 If the Client instructs TW to rectify any damage caused by any other tradesman, this will become a variation to the original quotation and will be charged at TW normal hourly rate.

10.14 Unless otherwise agreed, Goods which TW brings to the site which are surplus remain the property of TW.

11. Client's Responsibilities

11.1 It is the Client's responsibility to:

- (a) provide all necessary services and amenities to enable TW to provide the Services; and
- (b) make the premises available on the agreed date/s and time/s and ensure that TW has clear and free access to the site (which may include, providing access codes and/or keys to TW where applicable) at all times to enable them to undertake the Services, and:
 - (i) TW shall not be liable for any loss or damage to the address (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of TW; and
 - (ii) if installation is interrupted by the failure of the Client to adhere to the schedule of Services agreed to between TW and the Client, any additional costs will be invoiced to the Client as in accordance with clause 7.2;
- (c) provide any heavy equipment and have erected scaffolding to enable the Services to be undertaken (where in TW's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed. In the event the Client fails to provide the scaffolding or it is not code compliant and the responsibility then falls onto TW, the costs associated will be charged to the Client in accordance with clause 7.2; and
- (d) remove any furniture or personal items from the vicinity of the Services, and agrees that TW shall not be liable for any damage caused to those items through the Client's failure to comply with this clause.

11.2 The Client acknowledges that they shall:

- (a) not be entitled to withhold any payment due under this contract because of any delay in the connection of, or the supply of electricity to the Goods by an electrical distributor or any other third party; and
- (b) be wholly responsible for:
 - (i) the removal of rubbish from or clean-up of the worksite; and
 - (ii) ensuring that the Goods ordered are suitable for their intended use.

11.3 In the event asbestos or any other toxic substances are discovered at the property, that it is the Client's responsibility to ensure the safe removal of the same. The Client further agrees to indemnify TW against any costs incurred by TW as a consequence of such discovery. Under no circumstances will TW handle removal of asbestos product.

12. Hidden Amenities

12.1 Prior to TW commencing any work the Client must advise TW of the precise location of all hidden amenities on the site and clearly mark the same. The hidden amenities the Client 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.

12.2 Whilst TW will take all care to avoid damage to any hidden amenities the Client agrees to indemnify TW 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 12.1.

13. Compliance with Laws

13.1 The Client and TW 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 including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.

13.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Goods.

13.3 Notwithstanding clause 13.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") TW agrees at all times comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety laws in the workplace regardless of whether they may be the party in control of the worksite or where they may be acting as a sub-contractor for the Client who has engaged a third party head contractor.

14. Title

14.1 TW and the Client agree that ownership of the Goods shall not pass until:

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

14.2 Receipt by TW 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.

14.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Client in accordance with clause 14.1 that the Client is only a bailee of the Goods and unless the Goods have become fixtures must return the Goods to TW on request;
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for TW and must pay to TW the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the production of these terms and conditions by TW shall be sufficient evidence of TW's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with TW to make further enquiries;
- (d) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for TW and must pay or deliver the proceeds to TW on demand;
- (e) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of TW and must sell, dispose of or return the resulting product to TW as it so directs;
- (f) unless the Goods have become fixtures the Client irrevocably authorises TW to enter any premises where TW believes the Goods are kept and recover possession of the Goods;
- (g) TW may recover possession of any Goods in transit whether or not delivery has occurred;
- (h) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of TW;

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- (i) TW may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

15. Personal Property Securities Act 1999 (“PPSA”)

- 15.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Client to TW for Services – that have previously been supplied and that will be supplied in the future by TW to the Client.
- 15.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which TW may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, TW for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of TW; and
 - (d) immediately advise TW of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 15.3 TW and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 15.5 Unless otherwise agreed to in writing by TW, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 15.6 The Client shall unconditionally ratify any actions taken by TW under clauses 15.1 to 15.5.
- 15.7 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

16. Security and Charge

- 16.1 In consideration of TW agreeing to supply the Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Client indemnifies TW from and against all TW's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising TW's rights under this clause.
- 16.3 The Client irrevocably appoints TW and each director of TW as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.

17. Defects

- 17.1 The Client shall inspect the Goods on delivery (Services on completion) and shall within seven (7) days of delivery (time being of the essence) notify TW of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford TW an opportunity to first inspect the Goods or to review the Services within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which TW has agreed in writing that the Client is entitled to reject, TW's liability is limited to either (at TW's discretion) replacing the Goods or repairing the Goods.
- 17.2 Notwithstanding the provisions of clause 17.1, in the event where the Client fails to comply with the right to TW to have first refusal to inspect any alleged claim and engages another third party to rectify, this will void any warranty previously offered.
- 17.3 Goods will not be accepted for return other than in accordance with 17.1 above, and provided that:
- (a) TW has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Client's cost within fourteen (14) days of the delivery date; and
 - (c) TW will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 17.4 TW will not accept the return of Goods for credit.
- 17.5 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.

18. Warranties

- 18.1 Subject to the conditions of warranty set out in clause 18.2 TW warrants that if any defect in any workmanship of TW becomes apparent and is reported to TW within thirty (30) days of the date of delivery (time being of the essence) then TW will either (at TW's sole discretion) replace or remedy the workmanship.
- 18.2 The conditions applicable to the warranty given by clause 18.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain and/or store any Goods; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines in the Client Responsibility Sheet provided by TW; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and TW shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without TW's consent.
 - (c) in respect of all claims TW shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

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- 18.3 For Goods not manufactured by TW, the warranty shall be the current warranty provided by the manufacturer of the Goods. TW shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 19. Consumer Guarantees Act 1993**
- 19.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by TW to the Client.
- 20. Intellectual Property**
- 20.1 Where TW has designed, drawn, written plans or a schedule of Services, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in TW, and shall only be used by the Client at TW's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of TW.
- 20.2 The Client warrants that all designs, specifications or instructions given to TW will not cause TW to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify TW against any action taken by a third party against TW in respect of any such infringement.
- 20.3 The Client agrees that TW may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which TW has created for the Client.
- 21. Default and Consequences of Default**
- 21.1 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 TW's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Client owes TW any money the Client shall indemnify TW from and against all costs and disbursements incurred by TW in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, TW's collection agency costs, and bank dishonour fees).
- 21.3 Further to any other rights or remedies TW may have under this Contract, if a Client has made payment to TW, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by TW under this clause 21, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 21.4 Without prejudice to TW's other remedies at law TW shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to TW shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to TW becomes overdue, or in TW's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by TW;
 - (c) the Client 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 Client or any asset of the Client.
- 22. Cancellation**
- 22.1 Without prejudice to any other rights or remedies TW may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this Contract within ten (10) working days of receipt by the Client of such notice/s) then TW may suspend the Services immediately. TW will not be liable to the Client for any loss or damage the Client suffers because TW has exercised its rights under this clause.
- 22.2 TW may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice TW shall repay to the Client any money paid by the Client for the Goods. TW shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by TW as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.4 Where the Client is connected to TW's network on a fixed term contract, one (1) months' notice must be provided by the Client in writing to TW and a Network Disconnection Fee will be charged and where applicable, all products must be returned.
- 22.5 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 23. Privacy Policy**
- 23.1 All emails, documents, images or other recorded information held or used by TW is Personal Information as defined and referred to in clause 23.3 and therefore considered confidential. TW acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). TW acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by TW that may result in serious harm to the Client, TW will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to TW in respect of Cookies where transactions for purchases/orders transpire directly from TW's website. TW agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to TW when TW sends an email to the Client, so TW may collect and review that information ("collectively Personal Information")

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- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via TW's website.
- 23.3 The Client authorises TW or TW's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including, 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 or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by TW from the Client directly or obtained by TW from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 23.4 Where the Client is an individual the authorities under clause 23.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 23.5 The Client shall have the right to request TW for a copy of the Personal Information about the Client retained by TW and the right to request TW to correct any incorrect Personal Information about the Client held by TW.

24. Service of Notices

- 24.1 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.
- 24.2 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.

25. Trusts

- 25.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not TW may have notice of the Trust, the Client covenants with TW as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of TW (TW will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

26. General

- 26.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 26.2 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.
- 26.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Christchurch, New Zealand.
- 26.4 TW shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by TW of these terms and conditions (alternatively TW's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 26.5 TW may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 26.6 The Client cannot licence or assign without the written approval of TW.
- 26.7 TW may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of TW's sub-contractors without the authority of TW.
- 26.8 The Client agrees that TW may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for TW to provide Services to the Client.
- 26.9 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.
- 26.10 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.