

# Bracourt PTY LTD T/as RedPoint – 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 6.8
- 1.2 "RedPoint" means Bracourt Pty Ltd T/A RedPoint, its successors and assigns or any person acting on behalf of and with the authority of Bracourt Pty Ltd T/A RedPoint 6.9
- 1.3 "Customer" means the persons, entities or any person acting on behalf of and with the authority of the Customer requesting RedPoint to provide the Services as specified in any proposal, quotation, order, invoice or other document or amendments 7.0
- (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 7.1
- (d) a trustee, and
- (e) includes the Customer's executors, administrators, successors and permitted assigns. 7.2
- 1.4 "Goods" means all Goods or Services supplied by RedPoint to the Customer at the Customer's request from time to time (where the contract so permits the terms 'Goods' or 'Services' shall be interchangeable for the other). 7.3
- 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. 7.4
- 1.6 "Cookies" means small files which are stored on a user's computer. They are assigned to 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 be tracked by cookies, they may opt out of 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. 7.5
- 1.7 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between RedPoint and the Customer in accordance with clause 6. 7.6
- 1.8 "GST" means Goods and Services Tax as defined within the A New 8.1 Tax System (Goods and Services Tax) 1999 (Cth).
2. **Acceptance**
- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Goods. 8.2
- 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 8.3 parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendments to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties. 8.4
- 2.4 Electronic signatures shall be deemed to be accepted by either party providing that the signature is made in accordance with the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.5 The Customer acknowledges and accepts that 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, RedPoint reserves the right to vary the Price with alternative Goods as per clause 6.2, 9.1, subject to prior confirmation and agreement of both parties. RedPoint also reserves the right to put the Customer's order on hold and/or halt all Services until such time as RedPoint and the Customer agree to such changes. RedPoint shall not be liable to the Customer for any loss or damage the Customer suffers due to RedPoint exercising its rights under this clause. 9.2
- 2.6 These terms and conditions may be meant to be read in conjunction with either RedPoint's Terms and Conditions or the Terms and Conditions posted RedPoint's website, and:
- (a) where the context so permits, the terms 'Goods' or 'Services' shall include any supply of Equipment, as defined therein; and
- (b) where there are any inconsistencies between the two documents then the terms and conditions contained herein shall prevail. 9.3
3. **Authorised Representatives**
- 3.1 Unless otherwise limited by clause 3.2 the Customer agrees that should the Customer introduce any third party to RedPoint as the Customer's duly authorised representative, that once introduced that person shall not be liable to the Customer for any loss or damage the Customer or Services on the Customer's behalf and/or to request any variation to the Services on the Customer's behalf (such authority to continue until all requested Services have been completed or the Customer otherwise notifies RedPoint in writing that said person is no longer the Customer's duly authorised representative). 10.0
- 3.2 In the event that the Customer's duly authorised representative as per clause 3.1 is to be used to act on behalf of the Customer on its behalf then the Customer must specifically and clearly advise RedPoint in writing of the parameters of the limited authority granted to their representative. 10.1
- 3.3 The Customer specifically acknowledges and accepts that they will be solely liable to RedPoint for all additional costs incurred by RedPoint (a) (including RedPoint's profit margin) in providing any Goods, Services (b) or variations to requested Services, and (c) in the event that the representative (subject always to the limitations imposed under clause 3.2 (if any)). 10.2
4. **Errors and Omissions**
- 4.1 The Customer acknowledges and accepts that RedPoint shall, without prejudice, accept no liability in respect of any alleged or actual error(s) (a) and/or omission(s):
- (a) resulting from an inadvertent mistake made by RedPoint in the formation and/or administration of this Contract; and
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by RedPoint in relation to the Services.
- 4.2 In the event such an error or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or willful misconduct of RedPoint, the Customer shall not be entitled to treat the Contract as repudiated nor render it invalid.
5. **Change in Control**
- 5.1 The Customer shall give RedPoint not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any change in the name of the Customer (including but not limited to changes in the Customer's name, address, contact phone or fax numbers, change of trustees, or business practice). The Customer shall be liable for any loss incurred by RedPoint as a result of the Customer's failure to comply with this clause.
6. **Price and Payment**
- 6.1 At RedPoint's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by RedPoint to the Customer; or
- (b) the Price as at the date of Delivery of the Goods according to RedPoint's current price list; and
- (c) RedPoint'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 RedPoint reserves the right to change the Price:
- (a) if a variation to the quotation is requested;
- (b) if during the course of the Services, the Goods are not or cease to be available from RedPoint; the Price may be increased; then RedPoint reserves the right to provide alternative Goods; or
- (c) in the event of increases to RedPoint 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) which are beyond RedPoint's control.
- 6.3 Variations will be charged for on the basis of RedPoint's quotation, and will be detailed in writing, and shown as variations on RedPoint's invoice. The Customer shall be required to respond to any variation 12.3 submitted by RedPoint within the time frame in the quotation. Failure to do so will be deemed to be acceptance of the variation. RedPoint will attribute RedPoint 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 RedPoint'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 determined by RedPoint, which may be:
- (a) on Delivery of the Goods;
- (b) before Delivery of the Goods;
- (c) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices; and
- (d) the date specified on any invoice or other form as being the date for payment; or
- (e) failing any notice to the contrary, the date which is seven (7) days following the date of any cash given to the Customer by RedPoint.
- 6.6 Payment may be made by cash, cheque, bank cheque, electronic/online banking, credit card, or any other method of payment (including PayPal, or by any other method as agreed to between the Customer and RedPoint).
- 6.7 RedPoint may in its discretion allocate any payment received from the Customer towards any invoice that RedPoint determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer RedPoint may re-allocate any payments previously received and allocated to any other invoice. RedPoint's allocation of RedPoint payment will be deemed to be allocated in such manner as 12.5
- preserves the maximum value of RedPoint's Purchase Money 12.6 Security Interest (as defined in the PPSA) in the Goods.
- 12.7 The Customer shall not be entitled to set off against, or deduct from the Purchase Money, any amount due or payable to the Customer by RedPoint nor to withhold payment of any invoice because part of that invoice is in dispute.
- 12.8 RedPoint has stated the Price does not include GST. In addition to the Price, the Customer must pay to RedPoint an amount equal to any GST RedPoint must pay for any supply by RedPoint under this or any other agreement for the sale of the Goods. The Customer must pay the 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. 13.0
- 13.1 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.
- 13.2 **On-Line Ordering**
- The Customer acknowledges and agrees that:
- (a) RedPoint does not guarantee the system's performance;
- (b) 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 RedPoint on the online-ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
- (c) there are inherent hazards in electronic distribution, and as such RedPoint cannot warrant against delays or errors in transmitting data between the Customer and RedPoint including orders, and you agree that to the maximum extent permitted by law, RedPoint will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
- (d) when making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by RedPoint and/or displayed on the website. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences;
- (e) if the Customer is not the cardholder for any credit card being used to pay for the transaction, the Customer must obtain the permission of the cardholder that the Customer has received permission from the cardholder for use of the credit card for the transaction.
- 14.3 RedPoint reserves the right to terminate the Customer's order if it is found that the Customer has provided false or misleading information, interfered with other users or the administration of RedPoint's 14.4 business, or violated these terms and conditions.
- 14.5 **Delivery**
- Delivery ("Delivery") of the Goods is taken to occur at the time that the Customer or the Customer's nominated carrier takes possession of the Goods at RedPoint's address, or
- (a) RedPoint (or RedPoint's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 14.6 At RedPoint's sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.
- 14.7 RedPoint may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the terms and conditions of this Contract.
- 14.8 Any time specified by RedPoint for Delivery of the Goods is an estimate only. The Customer must take Delivery by receipt or otherwise in accordance with the terms and conditions of this Contract. RedPoint will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. In the event that the Customer is unable to take Delivery of the Goods as arranged then RedPoint shall be entitled to change a reasonable fee for redelivery and/or storage.
- 14.9 **Risk**
- 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.
- 14.10 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, RedPoint is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by RedPoint is sufficient evidence of the Customer's rights to the insurance proceeds without the need for any person dealing with RedPoint to make further enquiries.
- 14.11 If the Customer requests RedPoint to leave Goods outside RedPoint's premises for collection, the Customer acknowledges that the Goods are then such Goods shall be left at the Customer's sole risk.
- 14.12 **Product Specifications**
- The Customer acknowledges that:
- (a) all descriptions, illustrations, drawings, data, dimensions, ratings and weights stated in RedPoint's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and do not constitute a warranty; and
- (b) the Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by RedPoint.
- 14.13 The Customer acknowledges that the Customer's order or figures to the Customer regarding the performance of the Goods, the Customer acknowledges that RedPoint has given these in good faith, and are estimates based on industry prescribed estimates and optimal operating conditions.
- 14.14 **Title**
- RedPoint and the Customer agree that ownership of the Goods shall remain with RedPoint until payment in full has been received by the Customer and the Customer has paid RedPoint all amounts owing to RedPoint. 14.15
- 14.16 The Customer has met all of its other obligations to RedPoint. The Customer shall not be entitled to return or exchange the Goods unless the Customer has paid RedPoint the full amount of the purchase price and the Customer shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 14.17 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 14.1, the Customer is only a bailee of the Goods and must return the Goods 15.1 to RedPoint on request.
- 15.2 The Customer holds the Goods on behalf of the Customer's insurance of the Goods on trust for RedPoint and must pay to RedPoint the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- 15.3 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 RedPoint and must pay or deliver the 16.1 proceeds to RedPoint on demand;
- 16.2 the Customer shall not convert or process the Goods or intermix them with other goods or use the Goods for any purpose other than the Customer holds the resulting product on trust for the benefit of RedPoint as it must, sell, dispose of or return the resulting product to RedPoint as it 16.3 so directs.
- 16.4 The Customer irrevocably authorises RedPoint to enter any premises where RedPoint believes the Goods are kept and recover possession of the Goods;
- 16.5 the Customer may recover possession of any Goods in transit whether or not Delivery has occurred;
- 16.6 the Customer shall not charge or grant an encumbrance over the Goods or any part of the Goods or any interest in the Goods while they remain the property of RedPoint;
- 16.7 RedPoint may commence proceedings to recover the Price of the Goods, sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 16.8 **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.
- 16.9 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement by the purpose of the Act and creates a security interest in all Goods and/or collateral (including – being a monetary obligation of the Customer to RedPoint for Services – that has previously been supplied and that will be supplied in the future by RedPoint to the Customer.
- 16.10 The Customer undertakes to:
- (a) comply with all relevant documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which RedPoint may reasonably require to;
- (b) register a financing statement or financing change statement in 17.1 the Register to create a security interest on the Personal Property Securities Register;
- (c) register any other document required to be registered by the 17.2 PPSA or;
- (d) create a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii); and
- (e) indemnify, and upon demand reimburse, RedPoint for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- 17.3 the Customer registers a financing change statement in respect of a security interest without the prior written consent of RedPoint;
- 17.4 not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (including – being a monetary obligation of the Customer to RedPoint for Services – that has previously been supplied and that will be supplied in the future by RedPoint to the Customer;
- 17.5 immediately advise RedPoint of any material change in its business practices or circumstances that may result in a change in the nature of proceeds derived from such sales;
- 17.6 RedPoint 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;
- 17.7 The Customer waives their rights to receive notices under sections 95, 116, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 17.8 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 17.9 Unless otherwise stated or in writing by RedPoint, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 17.10 The Customer must unconditionally ratify any actions taken by the Customer in relation to the Goods or the Services provided by RedPoint Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 17.11 **Security and Charge**
- In consideration of RedPoint 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).
- 17.12 The Customer irrevocably appoints RedPoint and against all RedPoint's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising RedPoint's rights under this clause. The Customer irrevocably appoints RedPoint and each director of the Customer as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.
- 17.13 **Defects, Warranties and Returns, Competition and Consumer Act 2010**
- The Customer must inspect the Goods on Delivery and must within seven (7) days of Delivery notify RedPoint in writing of any evident defect, damage, shortage in quantity, or failure to comply with the description or any other defect or damage to the Goods, including but not limited to the quality or suitability of the Goods. RedPoint's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.14 If the Customer is a consumer within the meaning of the CCA, RedPoint's liability is limited to the extent permitted by section 64A of the Schedule 2.
- 17.15 If RedPoint is required to replace the Goods under this clause or the CCA, but is unable to do so, RedPoint may refund any money the Customer has paid for the Goods.
- 17.16 The Customer is not a consumer within the meaning of the CCA, RedPoint's liability for any defect or damage in the Goods is limited to the value of any express warranty or warranty card provided to the Customer by RedPoint at RedPoint's sole discretion;
- 17.17 RedPoint does not warrant that RedPoint is entitled, if RedPoint did not manufacture the Goods, otherwise negotiated absolutely.
- 17.18 Subject to this clause 14, returns will only be accepted provided that: the Customer has complied with the provisions of clause 14.1; and RedPoint has agreed that the Goods are defective; and the Goods are returned within a reasonable time at the Customer's expense and the Goods are not damaged or destroyed; and the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 17.19 Notwithstanding clause 14.1, to 14.8 but subject to the CCA, RedPoint's liability 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 failing to use 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 RedPoint;
- (e) fire, war or act of God, or act of God.
- 17.20 In the case of second hand Goods (including, but not limited to (g) refurbished batteries, etc.), unless the Customer is a consumer under the CCA, RedPoint's liability for any defect or damage in the Goods is limited to the value of any express warranty or warranty card provided to the Customer by RedPoint at RedPoint's sole discretion;
- 17.21 The Customer acknowledges and agrees that RedPoint has agreed to provide the Customer with the second hand Goods and calculated the price of the Goods on the basis of the second hand Goods and RedPoint may in its absolute discretion accept non-defective Goods for return in which case RedPoint may require the Customer to pay 18.0 handling fees of up to twenty percent (20%) of the value of the returned Goods.
- 18.1 Notwithstanding anything contained in this clause if RedPoint is required by a law to accept a return then RedPoint will only accept a return of the Goods if the Customer has paid RedPoint the full amount of the purchase price and the Customer shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 18.2 **Intellectual Property**
- Where RedPoint has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents relating to the Goods shall remain the property of RedPoint. The Customer agrees that RedPoint may (at no cost) use for the purposes of the Goods or any other purpose, any documents, designs, drawings or Goods which RedPoint has created for the Customer.
- 18.3 **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 RedPoint's sole discretion may be compounded monthly (at such a rate) after as well as before any judgment.
- 18.4 If the Customer owes RedPoint any money the Customer shall be deemed to have assigned to RedPoint all of the Customer's rights in the Customer's contract default fee, and bank dishonour fees).
- 18.5 Further to any assignment, RedPoint may have under this Contract, if a Customer has made payment to RedPoint and the 20.2 transaction is subsequently reversed, the Customer shall be liable for the Goods returned to RedPoint in addition to the further costs incurred by RedPoint under this clause 16 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.
- 18.6 Without prejudice to RedPoint's other remedies at law RedPoint shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to RedPoint shall, whether or not due for payment, be immediately payable if:
- (a) any money payable to RedPoint becomes overdue, or in RedPoint's 20.4 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 RedPoint;
- (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 officer is appointed in respect of the Customer or any asset of the 20.7 Customer.
- 18.7 **Cancellation**
- Without prejudice to any other remedies RedPoint may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions RedPoint may suspend or terminate the supply of Goods to the Customer. RedPoint shall be entitled to the Customer for any loss or damage the Customer suffers because RedPoint has exercised its rights under this clause.
- 18.8 RedPoint may cancel any contract to which these terms and 20.9 conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice RedPoint shall repay to the Customer any money paid by the Customer for the Goods. RedPoint shall not be liable for any loss or damage arising from the cancellation of the Customer's obligations under this Contract.
- 18.9 In the event that the Customer cancels Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by RedPoint as a direct result of the cancellation (including, but not limited to, any loss of profit).
- 18.10 Cancellation of orders for Goods made to the Customer's specification, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 18.11 **Privacy Policy**
- All emails, documents, images or other recorded information held or used by RedPoint is Personal Information, as defined and referred to in the Privacy Act 1988 (the "Act") and the Privacy Regulations made under the Act. RedPoint 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"). RedPoint acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by RedPoint that may result in serious harm to the Customer, RedPoint 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/or the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 18.12 Notwithstanding clause 18.1, privacy limitations will extend to RedPoint in respect of Cookies where transactions for purchases/orders transpire directly from RedPoint's website. RedPoint agrees to display references to such Cookies and/or similar tracking technologies, such as pixels and beacons (where 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 RedPoint when RedPoint sends an email to the Customer, so RedPoint may collect and review that information ("collective Personal Information").
- 18.13 In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable Cookies first by selecting the option to enable / disable provided on the website prior to proceeding with a purchase/order via RedPoint's website.
- 18.14 The Customer agrees for RedPoint 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 RedPoint.
- 18.15 The Customer agrees that RedPoint 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 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
- (c) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 18.16 The Customer consents to RedPoint being given a consumer credit report to collect overdue payment on commercial credit.
- 18.17 The Customer agrees that personal credit information provided may be used and retained by RedPoint for the following purposes (and for other agreed purposes (as 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 Customer's credit account.
- 18.18 RedPoint may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
- (b) to allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 18.19 The information given to the CRB may include:
- (a) Personal Information as not specified in clause 18.3 above;
- (b) name of the credit provider and that RedPoint 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 or the Customer's request for credit); and
- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than 150 days (and for which written notice of request of payment has been given and debt recovered or not recovered) or alternatively, that the Customer no longer has any overdue accounts and RedPoint has been paid or otherwise discharged and all details surrounding that fact.
- 18.20 RedPoint may, at its sole discretion, disclose to the CRB information that, in the opinion of RedPoint, the Customer has committed a serious credit infringement.
- 18.21 RedPoint agrees that the amount of any overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.22 The Customer shall have the right to request (by e-mail) from RedPoint:
- (a) a copy of the Personal Information about the Customer retained by RedPoint; and
- (b) RedPoint and the right to request that RedPoint correct any incorrect Personal Information; and
- (c) that RedPoint does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 18.23 RedPoint 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 RedPoint or is required to be maintained and/or stored in accordance with the law.
- 18.24 The Customer can make a privacy complaint by contacting RedPoint. RedPoint will not respond to a privacy 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 may make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 18.25 **Unpaid Seller's Rights**
- Where the Customer has left any item with RedPoint for repair, modification, exchange or for RedPoint to perform any other service in relation to the item and RedPoint has not received or been tendered the whole of any monies owing to it by the Customer, RedPoint shall have a lien on the item and the Customer shall be deemed to have agreed a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 18.26 The lien of RedPoint shall continue despite the commencement of proceedings, or judgment for any monies owing to RedPoint having been obtained against the Customer.
- 18.27 **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, New South Wales the state in which RedPoint has its principal place of business, and are subject to the jurisdiction of the Kempsey Local Court of New South Wales.
- 18.28 Subject to clause 14, RedPoint 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 RedPoint of these terms and conditions (alternatively RedPoint's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 18.29 RedPoint may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent, and the Customer cannot licence or assign without the written approval of RedPoint.
- 18.30 RedPoint 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 RedPoint's subcontractors without the authority of RedPoint.
- 18.31 The Customer agrees that RedPoint 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, if the Customer does not accept the changes, the Customer shall be deemed to have accepted the changes. Further request for RedPoint to provide Goods to the Customer.
- 18.32 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.
- 18.33 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 prohibited from making this Contract creating binding and valid legal obligations on them.

