

Terms and Conditions

1. Definitions

- 1.1 "Agent" means A'Besco Pty Ltd ABN 71 115 768 146 trading as A'Besco Blinds and Awnings, its successors and assigns or any person acting on behalf of and with its authority.
- 1.2 "Customer" means the person/s requesting the Agent to provide the Goods & Services as specified in any invoice, document or order, and if there is more than one person requesting the Services is a reference to each person jointly and severally.
- 1.3 "Goods & Services" means all goods and services supplied by the Agent to the Customer at the Customer's request from time to time.
- 1.4 "Incidental Items" means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by the Agent in the course of it conducting or supplying to the Customer, any Goods & Services under this contract.
- 1.5 "Price" means the price payable (plus any GST where applicable) for the Goods & Services in accordance with clause 6 of this contract.
- 1.6 "GST" means the goods and services tax pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as may be amended from time to time.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound by these terms and conditions if the Customer places an order for, or accepts, any Goods & Services provided by the Agent.
- 2.2 These terms and conditions may only be amended with the Agent's consent in writing and shall prevail over any other document or purported contract between the Customer and the Agent, including any purchase order.
- 2.3 The Customer agrees that the site will comply with any relevant work health and safety laws and any other relevant safety standards or legislation and shall notify the Agent (prior to attending) of any potential risk in the site which may pose a safety issue to the Agent and/or the Agent's employees, agents or contractors.

3. Electronic Transactions Act 2000 (NSW) ("ETA")

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the ETA or any other applicable provisions of the ETA or any Regulations referred to in the ETA.

4. Errors & Omissions

- 4.1 The Customer acknowledges and accepts that the Agent shall, without prejudice, is not liable in respect of any alleged or actual error(s) and/or omission(s):
 - (a) resulting from an inadvertent mistake made by the Agent in the formation and/or administration of this contract; and/or
 - (b) contained/omitted in/from any literature (hard copy and/or electronic) supplied by the Agent in respect of the Goods & Services.
- 4.2 If such an error and/or omission occurs, the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.
- 4.3 Fabric, finish and colour choice is a personal preference of the Customer. The Customer is responsible for any fabric, finish and colour choices despite any advice, recommendation, information, assistance given by the Agent in relation to Goods & Services and no alteration, refund or reimbursement for such choices will be entertained.

5. Change in Control

- 5.1 The Customer shall give the Agent not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or the site and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or email address/es, or business practice). The Customer shall be liable for any loss incurred by the Agent as a result of the Customer's failure to comply with this clause 5.1.

6. Price and Payment

- 6.1 At the Agent's sole discretion, the Price shall be either:
 - (a) as indicated on any invoice provided by the Agent to the Customer; or
 - (b) the Agent'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, whichever is the lesser.

- 6.2 The Agent reserves the right to change an amount in addition to the Price if a variation is required by the circumstances in the opinion of the Agent, including but not limited to as a result of delays by the Customer, rescheduling by the Customer, the need to attend the site on multiple or additional occasions, restricted access to the site and/or any additional Services required due to unforeseen circumstances not caused by the Agent including but not limited to limitations of access to the site, availability of machinery, safety considerations or as a result of any increase to the Agent in the cost of Goods & Services, Incidental Items and/or labour. Such items will be shown as variations and invoiced separately. All additional labour is provided at the hourly rate per installer disclosed on any quote and failing that, at the rate of \$85/hour + GST, whichever is the higher. Invoice/s for variation/s must be paid within five (5) business days and in any event, prior to attending site, whichever is the earlier.
- 6.3 At the Agent's sole discretion, a non-refundable deposit may be required, including for any variation/s.
- 6.4 Time for payment for the Goods & Services being of the essence, the Price will be payable by the Customer on the date/s determined by the Agent, which may be:
- (a) at the time of booking of the installation aspect of the Goods & Services;
 - (b) by way of instalments/progress payments in accordance with the Agent's payment schedule;
 - (c) the date specified on any invoice or other form issued by the Agent as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any Invoice given to the Customer by the Agent, which may be prior to supply, assembly or installation.
- 6.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card or by any other method offered by the Agent.
- 6.6 The Customer shall not be entitled to set off against or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Agent nor to withhold payment of any invoice because part of any invoice is in dispute.
- 6.7 Unless otherwise stated, the Price does not include GST. In addition to the Price, the Customer must pay to the Agent an amount equal to any applicable GST the Agent must pay for any supply by the Agent under this or any other contract for providing the Goods & Services. 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. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 7. Delivery**
- 7.1 At the Agent's sole discretion, delivery of the Goods & Services shall take place when the Goods & Services are supplied to the Customer at the site referred to in the relevant proposal, quotation, order or invoice.
- 7.2 Delivery of the Goods & Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this contract.
- 7.3 The Agent may deliver the Goods & Services by separate instalments. Each separate instalment may be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 7.4 Any time specified by the Agent for delivery of the Goods & Services is an estimate only and the Agent will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall use reasonable endeavours to enable the Goods & Services to be supplied at the time and site as was arranged between both parties. If the Agent is unable to supply the Goods & Services as agreed solely due to any action or inaction of the Customer, then the Agent shall be entitled to charge a reasonable fee for re-supplying the Goods & Services at a later time and date, for wasted labour at the rates disclosed in clause 6.2 and for any storage costs at cost plus ten percent (10%).
- 8. Risk**
- 8.1 Notwithstanding the passing of title, all risk in the Goods & Services including any Incidental Items passes to the Customer on delivery to the site or where clause 9.2 applies.
- 8.2 The Customer shall be responsible for any additional consumables supplied by the Agent after delivery of the Goods & Services unless agreed by the Customer and the Agent at the time of quotation.
- 8.3 The Customer acknowledges that in some instances pertaining to stain removal that repeated applications of treatments may be required. Although the Agent shall take all due care, some

residual fading of fabrics or other porous surfaces may result from such repeated spot treatments.

9. Care of Items

9.1 The Agent may at its discretion notify the Customer that it requires to store at the site items, Incidental Items, equipment, products and appliances required for the provision of the Goods & Services, in which event the Customer shall supply the Agent a safe area for storage and shall take all reasonable efforts to protect all items so stored from possible destruction, theft or damage. If any such items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Customer's responsibility. Any damage, deformation or defect arising from storage is not a matter for which the Agent is responsible and the Customer indemnifies the Agent for such matters.

9.2 If the Customer fails to take delivery of any of Goods & Services at the agreed date or time, without prejudice to any other rights the Agent may have, delivery of the Goods is deemed to have occurred and the Agent may store or arrange for the storage of those Goods off site or at its own locations however, any costs or expenses incurred by the Agent in relation to such transportation and storage, including any insurance, of the Goods pending delivery, assembly/installation at, and dispatch to, the site are payable by the Customer plus ten percent (10%).

10. Access

10.1 The Customer shall ensure that the Agent has clear and free access to the site at all times to enable the provision of the Goods & Services. The Agent shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways, decks, hard or grassed areas).

11. Title

11.1 The Agent and the Customer agree that ownership of any items provided as part of the provision of Goods & Services shall not pass until:

- (a) the Customer has paid the Agent in full all amounts owing for the Goods & Services; and
- (b) the Customer has met all other obligations due by the Customer to the Agent in respect of all contracts between the Agent and the Customer.

11.2 Receipt by the Agent of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then, the Agent's ownership or rights in respect of such items shall continue.

11.3 It is further agreed that pending payment in full of any amount due by the Customer to the Agent:

- (a) the Customer is only a bailee of the items and must return the items to the Agent immediately upon request by the Agent;
- (b) the Customer holds the benefit of the Customer's insurance of such items on trust for the Agent and must pay to the Agent the proceeds of any insurance in the event of the items being lost, damaged or destroyed;
- (c) the Customer must not sell, dispose or otherwise part with possession of the items. If the Customer sells, disposes or parts with possession of the items, then the Customer must hold the proceeds of sale of such items on trust for the Agent and must pay or deliver the proceeds to the Agent on demand;
- (d) the Customer should not convert or process the items or intermix them with other goods, but if the Customer does, so then the Customer holds the resulting product on trust for the benefit of the Agent and must dispose of or return the resulting product to the Agent as the Agent so directs;
- (e) the Customer shall not charge or grant an encumbrance over the items nor grant nor otherwise give away any interest in the items while they remain the property of the Agent; and
- (f) the Customer irrevocably authorises the Agent to enter any premises where the Agent believes the items are kept and recover possession of the items.

12. Personal Property Securities Act 2009 (Cth) ("PPSA")

12.1 In this clause 12, the terms '*financing statement*', '*financing change statement*', '*security agreement*' and '*security interest*' have the meanings given to them by the PPSA.

12.2 The Customer acknowledges and agrees that this contract constitutes a security agreement for the purposes of the PPSA and creates a security interest in:

- (a) all items supplied by the Agent to the Customer under this contract;
 - (b) all items supplied in the future by the Agent to the Customer; and
 - (c) all the Customer's present and after acquired property including any thing in respect of which the Customer has at any time a sufficient right, interest or power sufficient to grant a security interest, being a charge granted by the Customer in favour of the Agent for the purposes of securing payment of all monetary obligations in relation to the provision of the Goods & Services under this contract.
- 12.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Agent may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register established by the PPSA ("PPSR");
 - (ii) register any other document required to be registered by the PPSA; or (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Agent for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any items charged;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Agent; and
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the items and/or collateral (account) in favour of a third party without the prior written consent of the Agent.
- 12.4 The Agent 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. 12.5 The Customer waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by the Agent, the Customer waives any right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Customer must unconditionally ratify any actions taken by the Agent under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 13. Security and Charge**
- 13.1 In consideration of the Agent agreeing to supply Goods & Services, the Customer charges all of its right, 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 this contract (including, but not limited to, the payment of any money) and irrevocably authorises the Agent to lodge caveats or other documents or notices to notify and protect that charge.
- 13.2 The Customer indemnifies the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising the Agent's rights under this contract.
- 13.3 The Customer irrevocably appoints the Agent and each director of the Agent 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.
- 14. Defects, Warranties and the Competition and Consumer Act 2010 ("CCA")**
- 14.1 The Customer must within twenty-four (24) hours of completion inspect and notify the Agent in writing of any evident defect in the Goods & Services or Incidental Items provided (including the Agent's workmanship) or of any other claimed failure by the Agent to comply with the description of, or quote for, the Goods & Services which the Agent was to supply. The Customer must notify any other alleged defect as soon as is reasonably possible after any such defect becomes evident. Upon such notification, the Customer must allow the Agent to review the Goods & Services or Incidental Items that were provided.
- 14.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions ("Non-

- Excluded Guarantees*”).
- 14.3 The Agent acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in this contract or in respect of the Non-Excluded Guarantees, the Agent makes no warranties or other representations including, but not limited to, the quality or suitability of the Goods & Services. The Agent’s liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Customer is a consumer within the meaning of the CCA, then:
- (a) our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. Any warranties provided in relation to goods are those of the manufacturer; and
 - (b) the Agent’s liability is limited to the extent permitted by section 64A of Schedule 2 of the CCA.
- 14.6 If the Agent is required to rectify, re-supply or pay the cost of re-supplying the Goods & Services under this clause 14 or the CCA, but is unable to do so, then the Agent may refund any money the Customer has paid for the Goods & Services but only to the extent that such refund shall take into account the value of Goods & Services and Incidental Items which have been provided to the Customer which were not defective.
- 14.7 If the Customer is not a consumer within the meaning of the CCA, the Agent’s liability for any defective Goods & Services or Incidental Items is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by the Agent at the Agent’s sole discretion; or
 - (b) otherwise negated absolutely.
- 14.8 Notwithstanding clauses 14.1 to 14.7, but subject to the CCA, the Agent shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly use, maintain or store any items provided;
 - (b) the Customer using the items provided for any purpose other than that for which they were designed;
 - (c) the Customer continuing to use any items provided after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Goods & Services or Incidental Items by the Customer or any third party without the Agent’s prior approval;
 - (e) the Customer failing to follow any instructions or guidelines provided by the Agent; or
 - (f) fair wear and tear, any accident, weather event or act of God.
- 14.9 Any advice, recommendation, information or assistance given by the Agent in relation to fabric, finish or colour choice is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty or accuracy, appropriateness or reliability. The Agent is not liable for and the Customer releases and indemnifies the Agent from any liability or responsibility for any loss suffered from reliance on any such advice, recommendation, information or assistance.
- 15. Intellectual Property**
- 15.1 Where the Agent has designed, drawn or developed items for the Customer, then the copyright or any other intellectual property right in relation to such items shall remain the property of the Agent. Under no circumstances may such designs, drawings and documents be used without express written approval of the Agent.
- 15.2 The Customer warrants that all designs, specifications or instructions given to the Agent will not cause the Agent to infringe any patent, registered design or trademark in the execution of the Customer’s order and the Customer agrees to indemnify the Agent against any action taken by a third party against the Agent in respect of any such infringement.
- 15.3 The Customer unconditionally, irrevocably and forever authorizes and agrees to the Agent may take and use in perpetuity any audio-visual and still images of installed the Goods & Services and Incidental Items at the site for the purposes of marketing and promotion of the Agent’s business and the Goods & Services and Incidental Items anywhere in the world whether with other images and/or text and graphics as the Agent sees fit (whether on the Agent’s website and/or social media accounts, any other website or social media accounts of third parties, any television, magazine or other media publication or entry into any competition or otherwise as the Agent sees fit) without any fee or reward to the Customer.

16. Default and Consequences of Default

- 16.1 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 the Agent's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Customer owes the Agent any money, the Customer shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in recovering the debt (including but not limited to internal administration fees, legal costs and disbursements on a solicitor and own Customer basis and bank dishonour fees).
- 16.3 Further to any other rights or remedies the Agent may have under this contract, if a Customer has made payment to the Agent, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Agent 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.
- 16.4 Without prejudice to any other remedies the Agent may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under this contract, the Agent may suspend or terminate the supply of Goods & Services (or any part of them) to the Customer. The Agent will not be liable to the Customer for any loss or damage the Customer suffers because the Agent has exercised its rights under this clause 16.
- 16.5 Without prejudice to the Agent's other remedies at law, the Agent shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Agent becomes overdue, or if in the Agent's opinion the Customer will be unable to make a payment when it falls due;
 - (b) 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
 - (c) a receiver, manager, liquidator (provisional or otherwise), administrator or similar person is appointed in respect of the Customer or any asset of the Customer.

17. Cancellation

- 17.1 The Agent may cancel any contract to which these terms and conditions apply or cancel delivery of Goods & Services at any time before the preparations for the supply of the Goods & Services has commenced by giving written notice to the Customer. On giving such notice, the Agent shall repay to the Customer any money paid by the Customer for the Goods & Services (less any costs incurred in relation to the intended supply). The Agent shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.2 If the Customer cancels delivery of the Goods & Services (or any part of them) due to the default of the Customer, then the Customer shall be liable for any and all costs, expenses and losses incurred (whether direct or indirect) by the Agent as a direct result of the cancellation (including, but not limited to, any loss of profits).

18. Privacy Act 1988 (Cth)

- 18.1 The Customer agrees for the Agent to obtain from a credit reporting body ("CRB") a credit report containing personal credit information (e.g. name, address, date of birth, occupation, previous credit applications, credit history) about the Customer.
- 18.2 The Customer agrees that the Agent may exchange information about the Customer with any CRB and with related body corporates for the following purposes:
- (a) to assess an application by the Customer;
 - (b) to notify other CRBs and credit providers of a default by the Customer;
 - (c) to exchange information with other CRBs and credit providers to the status of the Customer's credit account, where the Customer is in default with other credit providers;
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history.
- 18.3 The Customer consents to the Agent being given a consumer credit report to collect overdue payment on commercial credit.
- 18.4 The Customer agrees that personal credit information provided may be used and retained by the Agent for the following purposes (and for other agreed purposes):
- (a) the provision of Goods & Services;
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in

- relation to the provision of Goods & Services;
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (d) enabling the collection of amounts outstanding in relation to the Goods & Services.
- 18.5 The Agent may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report; and/or
- (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 18.6 The information given to a CRB may include:
- (a) personal information as outlined in 18.1 above;
- (b) name of the credit provider and that the Agent is a current credit provider to the Customer;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made or debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and the Agent has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of the Agent, the Customer has committed a serious credit infringement; and/or
- (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.7 The Customer shall have the right to request (by e-mail) from the Agent: (a) a copy of the information about the Customer retained by the Agent and the right to request that the Agent correct any incorrect information; and (b) that the Agent does not disclose any personal information about the Customer for the purpose of direct marketing.
- 18.8 The Agent will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 18.9 The Customer can make a privacy complaint by contacting the Agent via e-mail. The Agent will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. If the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Office of the Australian Information Commissioner at www.oaic.gov.au.

19 Unpaid Seller's Rights

- 19.1 Where the Customer has left any item with the Agent for repair, modification, exchange or for the Agent to perform any other service in relation to the item and the Agent has not received or been tendered the whole of any monies owing to it by the Customer, the Agent shall have, until all monies owing to the Agent are paid:
- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 19.2 The lien of the Agent shall continue despite the commencement of proceedings, or judgment for any monies owing to the Agent having been obtained against the Customer.

20 Notices

- 20.1 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; or
- (d) if sent by email to the other party's last known email address.
- 20.2 Any notice that is posted shall be deemed to have been served at the time it was delivered in person, sent by email or left at an address or if posted, after on the fourth business day after posting.

21 Trusts

21.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ('Trust') then, whether or not the Agent may have notice of the Trust, the Customer covenants with the Agent as follows:

- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer has full and complete power and authority under the Trust to enter into this contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity; and
- (c) the Customer will not without consent in writing of the Agent (which will not be unreasonably withheld) cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the Trust's property.

22. General

22.1 The failure by the Agent to enforce any provision of this contract shall not be treated as a waiver of that provision, nor shall it affect the Agent'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.

22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.

22.3 Subject to clause 14, the Agent 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 the Agent of this contract (alternatively the Agent's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods & Services).

22.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Agent nor to withhold payment of any invoice because part of that invoice is in dispute.

22.5 The Agent may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

22.6 The Customer agrees that the Agent may amend these terms and conditions at any time. If the Agent makes a change to these terms and conditions, then that change will take effect from the date on which the Agent notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Agent to provide Services to the Customer.

22.7 Neither party shall be liable for any default (other than payment by the Customer) due to any act of God, war, terrorism, pandemic, shortages or materials, Government decrees, proclamations or orders, transport difficulties, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

22.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this contract creates binding and valid legal obligations on it.