
Statewide Forklifts Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1. “**SWF**” means Statewide Forklifts Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Statewide Forklifts Pty Ltd.
- 1.2. “**Customer**” means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting SWF to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
 - (d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.3. “**Goods**” means all Goods (including, but not limited to parts, consumables, accessories, etc.) or Services supplied by SWF to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4. “**Price**” means the Price payable (plus any GST where applicable) for the Goods as agreed between SWF and the Customer in accordance with clause 5 below.
- 1.5. “**GST**” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. Acceptance

- 2.1. The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2. These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and SWF.
- 2.3. Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.4. In the event that SWF is required to provide the Services urgently, that may require SWF’s staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then SWF reserves the right to charge the Customer additional labour costs (penalty rates will apply), unless otherwise agreed between SWF and the Customer.

3. Errors and Omissions

- 3.1. The Customer acknowledges and accepts that SWF 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 SWF 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 SWF in respect of the Services.
- 3.2. In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of SWF; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

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

5. Price and Payment

- 5.1. At SWF’s sole discretion, the Price shall be either:
 - (a) as indicated on any invoice provided by SWF to the Customer; or
 - (b) the Price as at the date of delivery of the Goods according to SWF’s current price list; or
 - (c) SWF’s quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2. SWF reserves the right to change the Price if a variation to SWF’s quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such as supply and availability of Goods, faults found on closer inspection during servicing or as a result of any increase to SWF in the cost of 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) and labour) will be charged for on the basis of SWF’s quotation and will be shown as variations on the invoice. The Customer shall be required to respond to any variation submitted by SWF within ten (10) working days. Failure to do so will entitle SWF to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.3. At SWF’s sole discretion, a non-refundable deposit may be required.
- 5.4. Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by SWF, which may be:
 - (a) on delivery of the Goods;
 - (b) before delivery of the Goods;
 - (c) for certain approved Customers, thirty (30) days following the date of invoice;
 - (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 invoice given to the Customer by SWF.
- 5.5. Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), BPay, or by any other method as agreed to between the Customer and SWF.
- 5.6. 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 SWF nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7. Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to SWF an amount equal to any GST SWF must pay for any supply by SWF under this or any other contract for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the

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Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery of Goods

- 6.1. Delivery (“**Delivery**”) of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer’s nominated carrier takes possession of the Goods at SWF’s address; or
 - (b) SWF (or SWF’s nominated carrier) delivers the Goods to the Customer’s nominated address even if the Customer is not present at the address.
- 6.2. At SWF’s sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 6.3. SWF may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.4. Any time specified by SWF for delivery of the Goods is an estimate only and SWF 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 make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that SWF is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then SWF shall be entitled to charge a reasonable fee for redelivery and/or storage.

7. Risk

- 7.1. Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 7.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, SWF is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by SWF is sufficient evidence of SWF’s rights to receive the insurance proceeds without the need for any person dealing with SWF to make further enquiries.
- 7.3. If the Customer requests SWF to leave Goods outside SWF’s premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer’s sole risk.
- 7.4. The Customer acknowledges that SWF is only responsible for parts that are replaced by SWF and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Customer agrees to indemnify SWF against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 7.5. The Customer acknowledges and agree that where SWF has performed temporary repairs that:
- (a) SWF offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (b) SWF will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair.
- 7.6. It is the Customer’s responsibility to ensure that the forklift left for Services to be performed on is insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored on SWF’s premises. The forklift is at all times stored and repaired at the Customer’s sole risk.

8. Product Specifications

- 8.1. The Customer acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in SWF’s or the manufacturer’s fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. 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 SWF.

9. Title

- 9.1. SWF and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid SWF all amounts owing to SWF; and
 - (b) the Customer has met all of its other obligations to SWF.
- 9.2. Receipt by SWF 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.
- 9.3. It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 9.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to SWF on request.
 - (b) the Customer holds the benefit of the Customer’s insurance of the Goods on trust for SWF and must pay to SWF the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for SWF and must pay or deliver the proceeds to SWF on demand.
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of SWF and must sell, dispose of or return the resulting product to SWF as it so directs.
 - (e) the Customer irrevocably authorises SWF to enter any premises where SWF believes the Goods are kept and recover possession of the Goods.
 - (f) SWF may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of SWF.
 - (h) SWF may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

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

- 10.1. In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2. Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a

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monetary obligation of the Customer to SWF for Services – that have previously been supplied and that will be supplied in the future by SWF to the Customer.

- 10.3. 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 SWF may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, SWF for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of SWF;
 - (d) 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 SWF;
 - (e) immediately advise SWF of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4. SWF 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.
- 10.5. The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6. The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7. Unless otherwise agreed to in writing by SWF, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8. The Customer must unconditionally ratify any actions taken by SWF under clauses 10.3 to 10.5.
- 10.9. Subject to any express provisions to the contrary (including those contained in this clause 10), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

11. Security and Charge

- 11.1. In consideration of SWF 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).
- 11.2. The Customer indemnifies SWF from and against all SWF's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SWF's rights under this clause.
- 11.3. The Customer irrevocably appoints SWF and each director of SWF as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.

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

- 12.1. The Customer must inspect the Goods on delivery and must within fourteen (14) days of delivery notify SWF in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow SWF to inspect the Goods.
- 12.2. 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**).
- 12.3. SWF acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, SWF makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. SWF's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5. If the Customer is a consumer within the meaning of the CCA, SWF's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6. If SWF is required to replace the Goods under this clause or the CCA, but is unable to do so, SWF may refund any money the Customer has paid for the Goods.
- 12.7. If the Customer is not a consumer within the meaning of the CCA, SWF's liability for any defect or damage in the Goods is:
 - (a) limited to the value of any express warranty or warranty card provided to the Customer by SWF at SWF's sole discretion;
 - (b) limited to any warranty to which SWF is entitled, if SWF did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 12.8. Subject to this clause 12, returns will only be accepted provided that:
 - (a) the Customer has complied with the provisions of clause 12.1; and
 - (b) SWF has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 12.9. Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, SWF shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by SWF;
 - (e) fair wear and tear, any accident, or act of God.
- 12.10. In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by SWF as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly

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excluded. The Customer acknowledges and agrees that SWF has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 12.10.

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

13. Intellectual Property

- 13.1. Where SWF has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of SWF. Under no circumstances may such designs, drawings and documents be used without the express written approval of SWF.
- 13.2. The Customer warrants that all designs, specifications or instructions given to SWF will not cause SWF to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify SWF against any action taken by a third party against SWF in respect of any such infringement.
- 13.3. The Customer agrees that SWF may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which SWF has created for the Customer.

14. Default and Consequences of Default

- 14.1. 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 SWF's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2. If the Customer owes SWF any money the Customer shall indemnify SWF from and against all costs and disbursements incurred by SWF in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SWF's contract default fee, and bank dishonour fees).
- 14.3. Further to any other rights or remedies SWF may have under this contract, if a Customer has made payment to SWF, 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 SWF under this clause 14 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.
- 14.4. Without prejudice to SWF's other remedies at law SWF shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to SWF shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to SWF becomes overdue, or in SWF's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by SWF;
 - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

15. Cancellation

- 15.1. Without prejudice to any other remedies SWF may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions SWF may suspend or terminate the supply of Goods to the Customer. SWF will not be liable to the Customer for any loss or damage the Customer suffers because SWF has exercised its rights under this clause.
- 15.2. SWF may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice SWF shall repay to the Customer any money paid by the Customer for the Goods. SWF shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.3. In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by SWF as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.4. Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

16. Privacy Policy

- 16.1. All emails, documents, images or other recorded information held or used by SWF is Personal Information, as defined and referred to in clause 16.3, and therefore considered Confidential Information. SWF 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"). SWF acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by SWF that may result in serious harm to the Customer, SWF will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 16.2. Notwithstanding clause 16.1, privacy limitations will extend to SWF in respect of Cookies where the Customer utilises SWF's website to make enquiries. SWF agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to SWF when SWF sends an email to the Customer, so SWF may collect and review that information ("collectively Personal Information")

If the Customer consents to SWF's use of Cookies on SWF's website and later wishes to withdraw that consent, the Customer may manage and control SWF's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

- 16.3. The Customer agrees that SWF 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

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- (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 16.4. The Customer consents to SWF being given a consumer credit report to collect overdue payment on commercial credit.
- 16.5. The Customer agrees that personal credit information provided may be used and retained by SWF for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 16.6. SWF may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 16.7. The information given to the CRB may include:
- (a) Personal Information as outlined in 16.3 above;
 - (b) name of the credit provider and that SWF 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 (provided SWF is a member of an approved QAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and SWF has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of SWF, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 16.8. The Customer shall have the right to request (by e-mail) from SWF:
- (a) a copy of the Personal Information about the Customer retained by SWF and the right to request that SWF correct any incorrect Personal Information; and
 - (b) that SWF does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 16.9. SWF 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.
- 16.10. The Customer can make a privacy complaint by contacting SWF via e-mail. SWF will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

17. Unpaid Seller's Rights

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

18. Service of Notices

- 18.1. 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.
- 18.2. 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.

19. Trusts

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

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- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.

20. General

- 20.1. The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2. 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 SWF has its principal place of business, and are subject to the jurisdiction of the Penrith Courts in New South Wales.
- 20.3. Subject to clause 12, SWF 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 SWF of these terms and conditions (alternatively SWF's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 20.4. SWF may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 20.5. The Customer cannot licence or assign without the written approval of SWF.
- 20.6. SWF 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 SWF's sub-contractors without the authority of SWF.
- 20.7. The Customer agrees that SWF may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for SWF to provide Goods to the Customer.
- 20.8. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party.
- 20.9. 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.