
Robur Hire Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 **“Contract”** means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **“RHL”** means Robur Hire Limited, its successors and assigns or any person acting on behalf of and with the authority of Robur Hire Limited.
- 1.3 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting RHL to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.4 **“Goods”** means all Goods (including all packaging, process machinery and/or equipment and other Goods) or Services supplied by RHL 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).
- 1.5 **“Business Day”** means Monday to Friday 8.00am-5.00pm for normal business to be conducted, excluding a Saturday, Sunday or public holiday. Outside of these trading hours will be subject to RHL’s normal hourly rate or penal rates (i.e. Public Holiday).
- 1.6 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.7 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Customer does not wish to allow Cookies to operate in the background when using RHL’s 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 making enquiries via the website.**
- 1.8 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between RHL and the Customer in accordance with clause 6 below.

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 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 Where RHL gives any advice, recommendation, information, assistance or service provided by RHL in relation to Goods or Services supplied is given in good faith to the Customer, or the Customer’s agent, and is based on RHL’s own knowledge and experience and shall be accepted without liability on the part of RHL. Where such advice or recommendations are not acted upon then RHL shall require the Customer or their agent to authorise commencement of the Services in writing. RHL shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.5 The Customer acknowledges and accepts that:
- (a) the supply of Goods on credit shall not take effect until the Customer has completed a credit application with RHL and it has been approved with a credit limit established for the account; and
 - (b) in the event that the supply of Goods request exceeds the Customer’s credit limit and/or the account exceeds the payment terms, RHL reserves the right to refuse delivery; and
 - (c) 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, RHL reserves the right to vary the Price with alternative Goods as per clause 6.2, subject to prior confirmation and agreement of both parties. RHL also reserves the right to halt all Services until such time as RHL and the Customer agree to such changes. RHL shall not be liable to the Customer for any loss or damage the Customer suffers due to RHL exercising its rights under this clause; and
 - (d) the United Nations Convention on all international sales will not apply.
- 2.6 The Customer shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
- 2.7 In the event that RHL is required to provide the Services urgently which may require RHL’s staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then RHL reserves the right to charge the Customer additional travel and labour costs (penalty rates will apply) and Goods, unless otherwise agreed between RHL and the Customer.
- 2.8 If RHL has been requested by the Customer to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Customer irrespective of whether or not the repair goes ahead.
- 2.9 The Customer shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
- 2.10 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.11 These terms and conditions may be meant to be read in conjunction with RHL’s Hire Form, and:
- (a) where the context so permits, the terms ‘Goods’ or ‘Services’ shall include any supply of Equipment, as defined therein; and
 - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

3. Authorised Representatives

- 3.1 The Customer acknowledges that RHL shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to RHL, that person shall have the full authority of the Customer to order any Services, Goods and/or to request any variation

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thereto on the Customer's behalf. The Customer accepts that they will be solely liable to RHL for all additional costs incurred by RHL (including RHL's profit margin) in providing any Services, Goods or variation/s requested thereto by the Customer's duly authorised representative.

4. Errors and Omissions

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

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

5. Change in Control

5.1 The Customer shall give RHL 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 and contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by RHL as a result of the Customer's failure to comply with this clause.

6. Price and Payment

6.1 At RHL's sole discretion the Price shall be either:

- (a) as indicated on any invoice provided by RHL to the Customer; or
- (b) the Price as at the date of Delivery of the Goods according to RHL's current price list; or
- (c) further to clause 6.1(b), RHL'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 RHL reserves the right to change the Price:

- (a) if a variation to the Goods which are to be supplied is requested; or
- (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
- (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, obscured or other defect found on closer inspection or misdiagnosis in the first instance, delays in obtaining Goods, etc.) which are only discovered on commencement of the Services; or
- (d) if during the course of the Services, the Goods are not or cease to be available from RHL's third party suppliers, then RHL reserves the right to provide alternative Goods; or
- (e) in the event of increases to RHL in the cost of labour or materials (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to RHL in the cost of taxes, levies, freight and insurance charges, etc.) which are beyond RHL's control.

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

6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by RHL, which may be:

- (a) on or before Delivery of the Goods;
- (b) by way of instalments/progress payments in accordance with RHL's payment schedule;
- (c) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
- (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 RHL.

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

6.7 RHL may in its discretion allocate any payment received from the Customer towards any invoice that RHL determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer RHL may re-allocate any payments previously received and allocated. In the absence of any payment allocation by RHL, payment will be deemed to be allocated in such manner as preserves the maximum value of RHL's Purchase Money Security Interest (as defined in the PPSA) in the Goods.

6.8 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 RHL nor to withhold payment of any invoice because part of that invoice is in dispute.

6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to RHL an amount equal to any GST RHL must pay for any supply by RHL 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 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 of Goods

7.1 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 RHL's address; or
- (b) RHL (or RHL's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

7.2 At RHL's sole discretion the cost of Delivery is either included in the Price or is in addition to the Price.

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7.3 RHL may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

7.4 Any time specified by RHL for Delivery of the Goods is an estimate only and RHL 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 RHL is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then RHL shall be entitled to charge a reasonable fee for redelivery and/or storage.

8. Charges Earned and Demurrage

8.1 RHL charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and dispatched from the Customer's premises.

8.2 The Customer will be and shall remain responsible to RHL for all its proper charges incurred for any reason. A charge (in addition to the Price under clause 6.2) may be made by RHL in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of RHL. Such permissible delay period shall commence upon RHL reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Customer or the Customer's representative.

9. Risk

9.1 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.

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

9.3 If the Customer requests RHL to leave Goods outside RHL'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.

9.4 RHL shall be entitled to rely on the accuracy of any plans, specifications (including, but not limited to CAD drawings) and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, RHL accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

9.5 RHL is only responsible for Goods that are replaced by RHL and does not at any stage accept any liability in respect of previous services and/or parts supplied by any other third party that subsequently fail and found to be the source of the failure, the Customer agrees to indemnify RHL against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.

9.6 RHL shall not be liable for any defect, deterioration and/or damage to the Goods:

- (a) if the Customer does not follow RHL's recommendations;
- (b) where Goods are stored off site for extended periods of time as a result of any action/inaction by the Customer;
- (c) resulting from incorrect use and/or installation of the Goods by the Customer or any other third party.
- (d) where welding, galvanising (or any other heat related process) has caused distortion or any other damage.

9.7 The Customer acknowledges and accepts that where RHL has performed temporary repairs on the vehicle or machinery that:

- (a) RHL offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
- (b) RHL will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair required.

9.8 The Customer also acknowledges and accepts that RHL shall be entitled to:

- (a) retain any components replaced during the provision of the Services; and
- (b) the right to retain all proceeds obtained from the sale of such components to any auto recycler or salvage yard.

9.9 The Customer acknowledges that Goods supplied may:

- (a) expand, contract or distort as a result of exposure to heat, cold, weather;
- (b) mark or stain if exposed to certain substances; and
- (c) be damaged or disfigured by impact or scratching.

10. Product Specification

10.1 RHL acknowledges that all descriptive specifications, illustrations, dimensions and weights stated in RHL'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 RHL.

11. Access

11.1 The Customer shall ensure that RHL has clear and free access to the site at all times to enable them to undertake the Services. RHL shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of RHL.

12. Compliance with Laws

12.1 The Customer and RHL shall comply with the provisions of all statutes, regulations and any other relevant safety standards or legislation (including workplace health and safety (WHS) laws) that may be applicable to the Services.

13. Title

13.1 RHL and the Customer agree that ownership of the Goods shall not pass until:

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

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- 13.2 Receipt by RHL 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.
- 13.3 It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 13.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to RHL on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for RHL and must pay to RHL 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 RHL and must pay or deliver the proceeds to RHL on demand;
 - (d) the Customer irrevocably authorises RHL to enter any premises where RHL believes the Goods are kept and recover possession of the Goods;
 - (e) RHL may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (f) 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 RHL; and
 - (g) RHL may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

14. Personal Property Securities Act 1999 ("PPSA")

- 14.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Customer to RHL for Services – that have previously been supplied and that will be supplied in the future by RHL to the Customer.
- 14.2 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which RHL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, RHL for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of RHL; and
 - (d) immediately advise RHL 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.
- 14.3 RHL and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 14.5 Unless otherwise agreed to in writing by RHL, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6 The Customer shall unconditionally ratify any actions taken by RHL under clauses 14.1 to 14.5.
- 14.7 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

- 15.1 In consideration of RHL 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).
- 15.2 The Customer indemnifies RHL from and against all RHL's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising RHL's rights under this clause.
- 15.3 The Customer irrevocably appoints RHL and each director of RHL as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer's behalf.

16. Defects

- 16.1 The Customer shall inspect the Goods on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify RHL of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford RHL an opportunity to inspect the Goods within a reasonable time following Delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which RHL has agreed in writing that the Customer is entitled to reject, RHL's liability is limited to either (at RHL's discretion) replacing the Goods or repairing the Goods.
- 16.2 Goods will not be accepted for return other than in accordance with 16.1 above, and provided that:
- (a) RHL has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Customer's cost within seven (7) days of the Delivery date; and
 - (c) RHL will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 16.3 RHL will not accept the return of non-defective Goods for credit.
- 16.4 Subject to clause 16.1, non-stocklist items or Goods made to the Customer's specifications are not acceptable for credit or return.

17. Warranty

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17.1 Subject to the conditions of warranty set out in clause 17.2 RHL warrants that if any defect in any workmanship of RHL becomes apparent and is reported to RHL within three (3) months of the date of Delivery (time being of the essence) then RHL will either (at RHL's sole discretion) replace or remedy the workmanship.

17.2 The conditions applicable to the warranty given by clause 17.1 are:

(a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

(i) failure on the part of the Customer to properly maintain any Goods; or

(ii) failure on the part of the Customer to follow any instructions or guidelines provided by RHL; or

(iii) any use of any Goods otherwise than for any application specified on a quote or order form; or

(iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or

(v) fair wear and tear, any accident or act of God.

(b) the warranty shall cease and RHL shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without RHL's consent.

(c) in respect of all claims RHL shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.

17.3 For Goods not manufactured by RHL, the warranty shall be the current warranty provided by the manufacturer of the Goods. RHL shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

17.4 The warranty shall only apply when payment in full has been made by the Customer.

17.5 In the case of second hand Goods, the Customer acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by RHL as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. RHL shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

18. Consumer Guarantees Act 1993

18.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by RHL to the Customer.

19. Confidentiality and Intellectual Property

19.1 Both the Customer and RHL agree to treat all information and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.

19.2 Exceptions to clause 19.1 will be disclosures to legal advisers, disclosures required by law, and disclosures necessary for the proper performance of the Services.

19.3 Either party must promptly return or destroy all Confidential Information of the other party in its possession or control at the other party's request, unless required by law to retain it.

19.4 Confidential Information excludes information:

(a) generally available in the public domain (without unauthorised disclosure under this contract); or

(b) required by law, any stock exchange or regulatory body to be disclosed; or

(c) received from a third party entitled to disclose it; or

(d) that is independently developed.

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

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

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

19.8 The obligations of this clause 19 shall survive termination or cancellation of this Contract.

20. Default and Consequences of Default

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

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

20.3 Further to any other rights or remedies RHL may have under this Contract, if a Customer has made payment to RHL, 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 RHL under this clause 20 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.

20.4 Without prejudice to RHL's other remedies at law RHL shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to RHL shall, whether or not due for payment, become immediately payable if:

(a) any money payable to RHL becomes overdue, or in RHL's opinion the Customer will be unable to make a payment when it falls due;

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- (b) the Customer has exceeded any applicable credit limit provided by RHL;
- (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.

21. Cancellation

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

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

21.3 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 RHL as a direct result of the cancellation (including, but not limited to, any loss of profits).

21.4 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.

22. Privacy Policy

22.1 All emails, documents, images or other recorded information held or used by RHL is Personal Information as defined and referred to in clause 23.1 and therefore considered confidential. RHL acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). RHL acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by RHL that may result in serious harm to the Customer, RHL 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.

22.2 Notwithstanding clause 22.1, privacy limitations will extend to RHL in respect of Cookies where the Customer utilises RHL's website to make enquiries. RHL 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 RHL when RHL sends an email to the Customer, so RHL may collect and review that information ("collectively Personal Information")

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

22.3 The Customer authorises RHL or RHL's agent to:

- (a) access, collect, retain and use any information about the Customer;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
- (b) disclose information about the Customer, whether collected by RHL from the Customer directly or obtained by RHL from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.

22.4 Where the Customer is an individual the authorities under clause 23.1 are authorities or consents for the purposes of the Privacy Act 1993.

22.5 The Customer shall have the right to request RHL for a copy of the Personal Information about the Customer retained by RHL and the right to request RHL to correct any incorrect Personal Information about the Customer held by RHL.

23. Force Majeure

23.1 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, civil disturbance, riot, Government intervention or regulations, Council conditions or specifications, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party ("**Force Majeure**").

23.2 If a party becomes unable (wholly or in part) by Force Majeure, to carry out any of its duties or obligations under this agreement:

- (a) The party must give the other party prompt written notice of:
 - (i) detailed particulars of the Force Majeure;
 - (ii) so far as is known, the probably extent to which the party will be unable to perform or will be delayed in performing the duty or obligation.
- (b) the relevant duty or obligation, so far as it is affected by the Force Majeure, will be suspended during the continuance of the Force Majeure; and
- (c) the party will use all reasonable efforts to overcome or remove the Force Majeure as quickly as possible.

24. Trusts

24.1 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 RHL may have notice of the Trust, the Customer covenants with RHL as follows:

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- (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 RHL (RHL will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

25. General

25.1 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.

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

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

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

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

25.6 RHL 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 RHL's sub-contractors without the authority of RHL.

25.7 The Customer agrees that RHL 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 RHL to provide Goods to the Customer.

25.8 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.