
Your Design Group Pty Ltd – 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 "YDG" means Your Design Group Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Your Design Group Pty Ltd.
- 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting YDG to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 "Consultant" means any person or persons engaged by YDG to provide specialised works on behalf of the Client with respect of the Project.
- 1.5 "Fee" means the price payable (plus any GST where applicable) for the Services as agreed between YDG and the Client in accordance with clause 5 of this Contract.
- 1.6 "Documentation" means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by YDG in the course of it conducting, or supplying to the Client, any Services.
- 1.7 "Services" means all Services supplied by YDG to the Client at the Client's request from time to time and more particularly as described in YDG's quotation.
- 1.8 "Project" means the project as specified in YDG's quotation for which the Services are provided by YDG to the Client.
- 1.9 "Writing" includes printing, typing, lithography and other modes of reproducing words in a visible form and "Written" has a corresponding meaning.
- 1.10 "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.
- 1.11 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Services via the website.**
- 1.12 "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 Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by YDG.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Services on credit shall not take effect until the Client has completed a credit application with YDG and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Services request exceeds the Client's credit limit and/or the account exceeds the payment terms, YDG reserves the right to refuse delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that YDG 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 YDG 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 YDG 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 YDG; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

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

5. Fee and Payment

- 5.1 At YDG's sole discretion the Fee shall be either:
- (a) as indicated on any invoice provided by YDG to the Client; or
 - (b) YDG's quoted Fee (in addition to reimbursable expenses) as specified in YDG's quotation, or any other agreement as to charges which, subject to clause 5.2, which shall be binding upon YDG provided that the Client shall provide their acceptance in writing within thirty (30) days.
- 5.2 YDG reserves the right to change the Fee:

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- (a) in the event of a variation to YDG's quoted Fee as agreed by the Client pursuant to clause 5.1 of this Contract. In the event the Client requests changes after commencement of the Services then YDG (at its sole discretion) shall be entitled not only to vary the Fee but the Term. All variations shall be in writing detailing the reason for the variation, the impact on the Fee, Term and/or the scope of the contract and shall be signed by both parties.
 - (b) in the event of increases to YDG in the costs of supply and/or production of the Documents and/or Services (Including fluctuations in currency exchange), and/or Delivery, due to circumstances beyond the reasonable control of YDG.
- 5.3 At YDG's sole discretion a non-refundable deposit may be required.
- 5.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by YDG, which may be:
- (a) on delivery of the Documentation;
 - (b) by way of instalments/progress payments in accordance with YDG's payment schedule;
 - (c) thirty (30) days following the end of the month in which a statement is posted to the Client'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 Client by YDG.
- 5.5 The Client agrees to indemnify YDG for all costs and expenses (including, but not limited to, disbursements, postage, search fees, couriers and the like expenses), incurred by YDG in connection with the provision of the Services. YDG shall fully document all such expenses for submission to the Client.
- 5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and YDG.
- 5.7 YDG may in its discretion allocate any payment received from the Client towards any invoice that YDG determines and may do so at the time of receipt or at any time afterwards. On any default by the Client YDG may re-allocate any payments previously received and allocated. In the absence of any payment allocation by YDG, payment will be deemed to be allocated in such manner as preserves the maximum value of YDG's Purchase Money Security Interest (as defined in the PPSA) in the Services.
- 5.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by YDG nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to YDG an amount equal to any GST YDG must pay for any supply by YDG under this or any other agreement for providing YDG's Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. Extension of Contract Period**
- 6.1 YDG shall, as per clause 5.2 above, be entitled to claim an extension to the term of the contract in the event of delays resulting from any matter whatsoever which is not entirely under the control of YDG. These matters shall include, but are not limited to delays caused by:
- (a) response(s) to information request(s) made by YDG to the Client not being available when required;
 - (b) approval authorities response times for requests for preliminary decisions/information;
 - (c) information from Consultants, councils or referral agencies not being available when required;
 - (d) changes to the design brief being requested by the Client;
 - (e) time taken by the approval authority for the granting of required approvals; or
 - (f) any other variation to the contract.
- 7. Instructions and Advice**
- 7.1 YDG shall not consider whether the Client has any existing use rights in relation to the property unless specifically instructed to do so.
- 7.2 YDG is not instructed to have any regard to, or be aware of, any contracts or other commercial arrangements entered into by the Client, or on the Client's behalf, with any other person or entity.
- 7.3 YDG shall be entitled to rely on the Client providing YDG with all relevant documentation, material and/or written information regarding the property.
- 7.4 Unless expressly instructed to do so, YDG shall not be required to seek out other relevant documents from the Client, the Client's YDGs, any local and other public authorities, or other searches or enquiries.
- 7.5 The Client acknowledges that advice given by YDG may be qualified or conditional on information not yet available and/or future events. Where advice is clearly specified to be qualified or conditional, YDG shall not be liable in relation to the part of the advice to the extent that the information or events make the part incorrect.
- 8. Compliance with Laws**
- 8.1 The Client and YDG agree that both parties shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the provision of Services by YDG.
- 8.2 The Client shall obtain (at the expense of the Client) all licences and approvals that may be required to enable YDG to provide the Services.
- 9. Nominated Consultants**
- 9.1 YDG shall engage Consultants as specified in the quotation acting solely as agent on behalf of the Client and the following shall apply:
- (a) YDG shall be entitled to enter into contracts with such Consultants in the name of the client; and
 - (b) the Client shall be responsible for all payments to such Consultants; and
 - (c) where YDG pays the Consultant's account on behalf of the Client, the Client shall reimburse YDG for the payment of the Consultant's account together with an account-handling fee within seven (7) days from the date of submission of the account by YDG to the Client; and
 - (d) if the Client does not reimburse YDG within seven (7) days from the date of submission of the account in accordance with subparagraph (c) above, YDG shall be entitled to:
 - (i) charge interest as per clause 19.1 from the date of payment of the Consultant's account by YDG to the date of reimbursement to YDG by the Client; and/or
 - (ii) charge an administration fee as allowed by this Contract.

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9.2 YDG does not warrant the accuracy or quality of the Consultant's work or warrant that the recommendations of the Consultant are appropriate or adequate or are fit for their purpose or that they are not given negligently. The Client agrees that they shall not make any demand on YDG or commence any legal proceedings against YDG and YDG shall have no liability, whether in negligence or otherwise, to the Client in relation to any work performed by the Consultant.

9.3 At the option of the Client notified to YDG in writing, the Client shall engage relevant Consultants required for the Project (after consultation with YDG) and shall be liable for all payments to such Consultants.

10. YDG's Obligations

10.1 YDG warrants that it has the necessary skills, competence, and experience to undertake and complete the Services and shall at all times apply such skills, competence and experience in performance of the Services.

10.2 YDG accepts that it shall be appointed and shall be entitled to act as the Client's agent for the purposes of the Project for the term of this Contract.

10.3 YDG represents that YDG and its directors maintain current registration with the Office of Consumer and Business Affairs and maintains current professional indemnity insurance.

10.4 If the Client shall instruct YDG to change the scope of the Services, YDG shall promptly notify the Client in writing of any variation in Fees pursuant to clause 5.2 of this Contract. The Client agrees that additional fees may be payable.

10.5 YDG shall keep full records of the Services provided in the manner determined by YDG, and shall provide to the Client with updates with respect of the Services at the time and in the manner determined by YDG in YDG's absolute discretion.

10.6 YDG shall accept no duty or responsibility (including in negligence) and disclaims all liability of any nature whatsoever to any third party that makes use of the plans without the express authority of YDG or who uses the plans in a manner that is outside of the purpose for which the plans were originally prepared.

11. Client's Obligations

11.1 The Client appoints YDG as its agent for the purposes of the Project.

11.2 The Client shall provide to YDG all documentation and other information as and when requested. The Client acknowledges that the ability of YDG to provide the Services is dependent upon the Client complying with this sub-clause.

11.3 The Client acknowledges that if their requirements change during the term of this Contract, the Fee may be subject to change.

11.4 The Client warrants that the site of the Project complies with all relevant laws and regulations and undertakes to appoint consultants to identify, handle and/or remove any hazardous or toxic materials or substances which may be located on the site of the Project, prior to the commencement of this Contract.

11.5 The Client acknowledges that any plans prepared by YDG have been prepared taking into account the Client's particular instructions and requirements and that the plans are for the private and confidential use of the Client. The plans shall not be reproduced in whole or in part nor relied upon by any third parties for any use whatsoever without the express authority of YDG.

12. Delivery of Services

12.1 At YDG's sole discretion delivery of the Services shall take place when:

- (a) the Services are supplied to the Client at YDG's address; or
- (b) the Services are supplied to the Client at the Client's nominated address.

12.2 The cost of delivery is either included, or in addition to the Price.

12.3 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this Contract.

12.4 YDG may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

12.5 Any time specified by YDG for delivery of the Services is an estimate only and YDG will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that YDG is unable to supply the Services as agreed solely due to any action or inaction of the Client then YDG shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.

13. Risk

13.1 Irrespective of whether YDG retains ownership of any Documentation all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as YDG may repossess the Documentation in accordance with clause 14.3(c). The Client must insure all Documentation on or before delivery.

13.2 YDG reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Documentation as a result of the Client's failure to insure in accordance with clause 13.1.

14. Title

14.1 YDG and the Client agree that where it is intended that the ownership of Documentation is to pass to the Client that such ownership shall not pass until:

- (a) the Client has paid YDG all amounts owing for the Services; and
- (b) the Client has met all other obligations due by the Client to YDG in respect of all contracts between YDG and the Client.

14.2 Receipt by YDG 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 YDG's ownership or rights in respect of the Documentation shall continue.

14.3 It is further agreed that:

- (a) the Client is only a bailee of the Documentation and must return the Documentation to YDG immediately upon request by YDG;
- (b) the Client holds the benefit of the Client's insurance of the Documentation on trust for YDG and must pay to YDG the proceeds of any insurance in the event of the Documentation being lost, damaged or destroyed;
- (c) the Client irrevocably authorises YDG to enter any premises where YDG believes the Documentation are kept and recover possession of the Documentation.

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

- 15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 15.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- (a) all Documentation previously supplied by YDG to the Client;
 - (b) all Documentation will be supplied in the future by YDG to the Client; and
 - (c) all the Client’s present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to YDG for Services – that have previously been provided and that will be provided in the future by YDG to the Client.
- 15.3 The Client 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 YDG 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 15.3(a)(i) or 15.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, YDG 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 Documentation charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of YDG;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Documentation in favour of a third party without the prior written consent of YDG.
- 15.4 YDG and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 15.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by YDG, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Client must unconditionally ratify any actions taken by YDG under clauses 15.3 to 15.5.
- 15.9 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

16. Security and Charge

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

17. Defects, Warranties and the Competition and Consumer Act 2010 (CCA)

- 17.1 The Client must inspect YDG’s Services on completion of the Services and must within seven (7) days notify YDG in writing of any evident defect in the Services or Documentation provided (including YDG’s workmanship) or of any other failure by YDG to comply with the description of, or quote for, the Services which YDG was to supply. The Client must notify any other alleged defect in YDG’s Services or Documentation as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow YDG to review the Services or Documentation that were provided.
- 17.2 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**).
- 17.3 YDG acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, YDG makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. YDG’s liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.5 If the Client is a consumer within the meaning of the CCA, YDG’s liability is limited to the extent permitted by section 64A of Schedule 2.
- 17.6 If YDG is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then YDG may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services and Documentation which have been provided to the Client which were not defective.
- 17.7 If the Client is not a consumer within the meaning of the CCA, YDG’s liability for any defective Services or Documentation is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by YDG at YDG’s sole discretion;
 - (b) otherwise negated absolutely.
- 17.8 Notwithstanding clauses 17.1 to 17.7 but subject to the CCA, YDG 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 Client failing to properly maintain or store any Documentation;
 - (b) the Client using the Documentation for any purpose other than that for which they were designed;

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- (c) the Client continuing to use any Documentation after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) interference with the Services by the Client or any third party without YDG's prior approval;
- (e) the Client failing to follow any instructions or guidelines provided by YDG;
- (f) fair wear and tear, any accident, or act of God.

18. Intellectual Property

- 18.1 Where YDG has designed, drawn or developed Documentation for the Client, then the copyright in any Documentation shall remain the property of YDG.
- 18.2 The Client has a license to reproduce drawings, specifications and other documents in which YDG has copyright as reasonably required in connection with the Project for which the Services have been provided. The license shall be immediately revoked and the Client shall have no such rights where any Fees and/or expenses due to YDG have not been paid in accordance with this Contract.
- 18.3 Designs, drawings or sketches, furnished by YDG, dummies, models or the like devices made or manipulated by YDG or made from YDG's original design, or from a design furnished by the Client, remain the exclusive property of YDG unless otherwise agreed upon in writing. They shall not be used for any purpose other than that nominated by YDG and no ideas obtained there from may be used without the consent of YDG. YDG shall be entitled to compensation from the Client for any unauthorised use of such items.
- 18.4 The Client shall not be entitled to use YDG's name nor the name of any director, employee or agent of YDG on any marketing or like material for the Project unless YDG provides their written consent.
- 18.5 Where the Client provides YDG any materials including sketches, photographs, drawings, plans or concepts upon which YDG is to base the work, the Client shall indemnify and keep indemnified YDG at all times against all actions, proceedings, claims, demands, liabilities, either express or implied, and all costs, losses, losses of profit, damages and expenses whatsoever which may be taken against YDG or incurred or become payable by YDG resulting or arising from any claim or infringement of any patent, registered design, trademark, copyright or any other property interest of a third party which may result out of the use by YDG of the materials.

19. Default and Consequences of Default

- 19.1 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 YDG's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes YDG any money the Client shall indemnify YDG from and against all costs and disbursements incurred by YDG in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, YDG's contract default fee, and bank dishonour fees).
- 19.3 Further to any other rights or remedies YDG may have under this Contract, if a Client has made payment to YDG, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by YDG under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 19.4 Without prejudice to YDG's other remedies at law YDG shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to YDG shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to YDG becomes overdue, or in YDG's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by YDG;
 - (c) the Client 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 Client or any asset of the Client.

20. Cancellation

- 20.1 Without prejudice to any other remedies YDG may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions YDG may suspend or terminate the supply of Services to the Client. YDG will not be liable to the Client for any loss or damage the Client suffers because YDG has exercised its rights under this clause.
- 20.2 YDG may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice YDG shall repay to the Client any money paid by the Client for the Services. YDG shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Client cancels delivery of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by YDG as a direct result of the cancellation (including, but not limited to, any loss of profits).

21. Privacy Policy

- 21.1 All emails, documents, images or other recorded information held or used by YDG is Personal Information, as defined and referred to in clause 21.3, and therefore considered Confidential Information. YDG 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"). YDG acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by YDG that may result in serious harm to the Client, YDG will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to YDG in respect of Cookies where transactions for purchases/orders transpire directly from YDG's website. YDG agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:

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- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to YDG when YDG sends an email to the Client, so YDG may collect and review that information (“collectively Personal Information”)
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via YDG’s website.
- 21.3 The Client agrees for YDG to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by YDG.
- 21.4 The Client agrees that YDG may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client’s repayment history in the preceding two (2) years.
- 21.5 The Client consents to YDG being given a consumer credit report to collect overdue payment on commercial credit.
- 21.6 The Client agrees that personal credit information provided may be used and retained by YDG for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services; and/or
 - (b) analysing, verifying and/or checking the Client’s credit, payment and/or status in relation to the provision of Services; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Services.
- 21.7 YDG may give information about the Client 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 Client including credit history.
- 21.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 21.3 above;
 - (b) name of the credit provider and that YDG is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client’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 and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and YDG has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of YDG, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client’s overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 21.9 The Client shall have the right to request (by e-mail) from YDG:
- (a) a copy of the Personal Information about the Client retained by YDG and the right to request that YDG correct any incorrect Personal Information; and
 - (b) that YDG does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 21.10 YDG will destroy Personal Information upon the Client’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.
- 21.11 The Client can make a privacy complaint by contacting YDG via e-mail. YDG 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 Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

22. Service of Notices

- 22.1 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.
- 22.2 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.

23. Trusts

- 23.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust (“Trust”) then whether or not YDG may have notice of the Trust, the Client covenants with YDG as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;

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

24. Lien

- 24.1 Where the Client has left any of the Client's documentation with YDG for YDG to provide any Services in relation to that documentation and YDG has not received or been tendered the whole of the Price, or the payment has been dishonoured, YDG shall have:
 - (a) a lien on the documentation; and
 - (b) the right to retain the documentation whilst YDG is in possession of the documentation until such time as payment has been made in full; and
 - (c) the lien of YDG shall continue despite the commencement of proceedings, or judgment for the Price having been obtained; and
 - (d) YDG shall be under no obligation to release the documentation to the Client if the Client is in default of payment except as may be required by any law or statute.

25. Dispute Resolution

- 25.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
 - (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 25.2 Nothing in this Contract shall require the either party to proceed with arbitration pursuant to clause 25.1 in the event the dispute is not resolved at mediation and either party, at their option, commence proceedings.

26. Building and Construction Industry Security of Payment Act 2002

- 26.1 At YDG's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
- 26.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.

27. Indemnity

- 27.1 Subject to clause 10, YDG shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by YDG of these terms and conditions (alternatively YDG's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).

28. Assignment

- 28.1 Neither party shall assign their rights under this Contract without the written consent of the other party.

29. General

- 29.1 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.
- 29.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Victoria in which YDG has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 29.3 Subject to clause 17, YDG shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by YDG of these terms and conditions (alternatively YDG's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 29.4 YDG may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 29.5 The Client cannot licence or assign without the written approval of YDG.
- 29.6 YDG may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of YDG's sub-contractors without the authority of YDG.
- 29.7 The Client agrees that YDG may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for YDG to provide Services to the Client.
- 29.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 29.9 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.