

# CREDIT ACCOUNT APPLICATION

**To Be Completed By Applicants** - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

<b>Client's Details:</b> <input type="checkbox"/> Individual <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other:			
Full or Legal Name:			
Trading Name (if different from above):			
Physical Address:		State:	Postcode:
Billing Address:		State:	Postcode:
Email Address:			
Phone No:	Fax No:	Mobile No:	
<b>Personal Details:</b> <i>(please complete if you are an Individual)</i>			
D.O.B.:		Driver's Licence No:	
<b>Business Details:</b> <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>			
ABN:	ACN:	Date Established <i>(current owners)</i> :	
Nature of Business:			
Paid Up Capital: \$		Estimated Monthly Purchases: \$	Credit Limit Required: \$
Principal Place of Business is: <input type="checkbox"/> Rented <input type="checkbox"/> Owned <input type="checkbox"/> Mortgaged <i>(to whom)</i> :			
Directors / Owners / Trustee <i>(if more than two, please attach a separate sheet)</i>			
(1) Full Name:		D.O.B.:	
Private Address:		State:	Postcode:
Driver's Licence No:	Phone No:	Mobile No:	
(2) Full Name:		D.O.B.:	
Private Address:		State:	Postcode:
Driver's Licence No:	Phone No:	Mobile No:	
<b>Account Terms:</b> <input type="checkbox"/> 30 Days <input type="checkbox"/> COD <input type="checkbox"/> Other:			
Purchase Order Required? <input type="checkbox"/> YES <input type="checkbox"/> NO		Accounts to be emailed? <input type="checkbox"/> YES <input type="checkbox"/> NO	
Accounts Email Address:			
Accounts Contact:		Phone No:	
Bank and Branch:		Account No:	
<b>Trade References:</b> <i>(please provide companies that are willing to do trade references)</i>			
Name:	Email Address:	Phone / Contact Name	
1.			
2.			
3.			

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Uniform Safety Signs Pty Ltd T/A Uniform Safety Signs Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. **I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.**

**SIGNED (CLIENT):** \_\_\_\_\_ **SIGNED (USS):** \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

**WITNESS TO CLIENT'S SIGNATURE:**

**Signed:** \_\_\_\_\_ **Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

\_\_\_\_\_

OFFICE USE ONLY				
Account / Ref. No.	CREDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	\$			/ /

## Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of Uniform Safety Signs Pty Ltd and its successors and assigns ("USS") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

("the Client") [Insert Company Name In Box Provided]

### I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

1. **GUARANTEE** the due and punctual payment to USS of all monies which are now owing to USS by the Client and all further sums of money from time to time owing to USS by the Client in respect of goods and services supplied or to be supplied by USS to the Client or any other liability of the Client to USS, and the due observance and performance by the Client of all its obligations contained or implied in any contract with USS, including but not limited to the Terms & Conditions of Trade signed by the Client and annexed to this Guarantee and Indemnity. If for any reason the Client does not pay any amount owing to USS the Guarantor will immediately on demand pay the relevant amount to USS. In consideration of USS agreeing to supply the goods to the Client, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 ("PPSA") and unequivocally consents to USS registering any interest so charged. Furthermore, it is agreed by both parties that where the Guarantor is acting in the capacity as a trustee for a trust, then the Guarantor agrees to charge all its right title and interest in any land realty, or other assets capable of being charged in its own capacity and in its capacity as trustee and shall be subject to the PPSA Registration as stated above. The Guarantor irrevocably appoints USS and each director of USS as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which USS may reasonably require to:
  - (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (b) register any other document required to be registered by the PPSA or any other law; or
  - (c) correct a defect in a statement referred to in clause 1(a) or 1(b).
2. **HOLD HARMLESS AND INDEMNIFY** USS on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, USS in connection with:
  - (a) the supply of goods and/or services to the Client; or
  - (b) the recovery of monies owing to USS by the Client including the enforcement of this Guarantee and Indemnity, and including but not limited to USS's nominees contract default fee and legal costs; or
  - (c) monies paid by USS with the Client's consent in settlement of a dispute that arises or results from a dispute between, USS, the Client, and a third party or any combination thereof, over the supply of goods and/or services by USS to the Client.

### I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

3. **I/We have received, read and understood USS's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of monies owing to USS by the Client and all obligations herein have been fully paid satisfied and performed.
5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on USS's part (whether in respect of the Client or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Client's obligations to USS, each Guarantor shall be a principal debtor and liable to USS accordingly.
6. If any payment received or recovered by USS is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and USS shall each be restored to the position in which they would have been had no such payment been made.
7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor and shall include the Guarantor's executors, administrators, successors and permitted assignments (where applicable) contained in this Guarantee and Indemnity shall bind them jointly and severally.
8. **I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Client to USS.**
9. I/we irrevocably authorise USS to obtain from any person or company any information which USS may require for credit reference purposes. I/We further irrevocably authorise USS to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with USS as a result of this Guarantee and Indemnity being actioned by USS.
10. The above information is to be used by USS for all purposes in connection with USS considering this Guarantee and Indemnity and the subsequent enforcement of the same.

<b>GUARANTOR-1</b> SIGNED: _____  FULL NAME: _____  HOME ADDRESS: _____  DATE OF BIRTH: _____  SIGNATURE OF WITNESS: _____  NAME OF WITNESS: _____  OCCUPATION: _____  PRESENT ADDRESS: _____
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<b>GUARANTOR-2</b> SIGNED: _____  FULL NAME: _____  HOME ADDRESS: _____  DATE OF BIRTH: _____  SIGNATURE OF WITNESS: _____  NAME OF WITNESS: _____  OCCUPATION: _____  PRESENT ADDRESS: _____
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Note: 1. If the Client is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).  
 2. If the Client is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

**WARNING: THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT**

## **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 “USS” means Uniform Safety Signs Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Uniform Safety Signs 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 USS 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 “Goods” means all Goods or Services supplied by USS to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 “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 Goods via the website.**
- 1.7 “Price” means the Price payable (plus any GST where applicable) for the Goods as agreed between USS and the Client in accordance with clause 5 below.
- 1.8 “GST” means Goods and Services Tax (GST) 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 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 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 USS 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 USS 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 USS 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 USS; 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 USS 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 USS as a result of the Client's failure to comply with this clause.

**5. Price and Payment**

- 5.1 At USS' sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by USS to the Client; or
  - (b) USS' 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 USS reserves the right to change the Price if a variation to USS' quotation is requested. When quotations are based on specifications, roughs, layouts, samples or dummies or printed, typewritten or other good copy, any extra work or cost caused by any variation by the Client of his original instructions or by the manuscript copy being, in USSs opinion, poorly prepared or by the Client's requirements being different from those originally submitted or described. Variations will be charged for on the basis of USS' quotation, and will be detailed in writing, and shown as variations on USS' invoice. The Client shall be required to respond to any variation submitted by USS within ten (10) working days. Failure to do so will entitle USS 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 All work carried out whether experimentally or otherwise at the Client's request will be charged to the Client.
- 5.4 Unless otherwise agreed, the Client shall bear the cost of fonts, or colour proofs, or artwork, specially bought or made at its request for the Services.
- 5.5 When style, artwork, material, type or layout is left to USS' judgement and then the Client makes further alterations to the copy this will be invoiced as an extra.
- 5.6 USS reserves the right to charge a "Service Fee" of seven dollars and fifty cents (\$7.50) on all orders placed under the value of fifty dollars (\$50.00) excluding Delivery and GST.
- 5.7 At USS' sole discretion a non-refundable deposit may be required.
- 5.8 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by USS, which may be:
- (a) on delivery of the Goods;
  - (b) the date specified on any invoice or other form as being the date for payment; or
  - (c) failing any notice to the contrary, the date which is thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
- 5.9 Payment may be made by 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 USS.
- 5.10 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 USS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.11 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to USS an amount equal to any GST USS must pay for any supply by USS under this or any other Contract for the sale of the Goods. 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. Delivery of Goods**

- 6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at USS' address; or
  - (b) USS (or USS' nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 At USS' sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

- 6.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then USS shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 USS 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.
- 6.5 Any time or date given by USS to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and USS will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

## **7. Risk**

- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client 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 Client, USS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by USS is sufficient evidence of USS' rights to receive the insurance proceeds without the need for any person dealing with USS to make further enquiries.
- 7.3 If the Client requests USS to leave Goods outside USS' premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 7.4 Any advice, recommendation, information, assistance or service provided by USS in relation to Goods or Services supplied is given in good faith, is based on USSs own knowledge and experience and shall be accepted without liability on the part of USS and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.
- 7.5 Where USS is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and USS shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 7.6 Whilst every care is taken by USS to carry out the instructions of the Client, it is the Clients responsibility to undertake a final proof reading of the Goods. USS shall be under no liability whatever for any errors not corrected by the Client in the final proof reading. Should the Clients alterations require additional proofs this shall be invoiced as an extra.
- 7.7 USS is under no obligation to provide samples of Goods ordered other than by virtual (computerised) sample. Whilst every effort will be taken by USS to match virtual colours with physical colours, USS will take no responsibility for any variation between virtual sale samples and either the virtual sale sample displayed on the Client's computer and/or the final product. Should a physical sample be required this will be provided on request by the Client and will be charged for as an extra including return freight, the charge will be contra against final invoice.
- 7.8 While every effort will be taken by USS to match PMS colours, USS will take no responsibility for any variation due to substrates, half tones and/or detailed graphics between sale samples (including but not limited to virtual or physical samples) and the final product.
- 7.9 USS shall not be held liable for inks wearing off through general wear and tear.
- 7.10 USS shall be under no liability whatever to the Client for any variation (beyond the reasonable control of USS) in colours between the approved prototype and the finished Goods.

## **8. Client's Property and Material Supplied by Client**

- 8.1 In the case of property and Goods left with USS without specific instructions, USS shall be free to dispose of them at the end of twelve months after his receiving them and to accept and retain any proceeds gained from such disposal to cover USS' costs in holding and handling such items.
- 8.2 Where materials or equipment are supplied by the Client for the provision of Services USS shall accept no liability for imperfect work caused by defects in, or the unsuitability of, such materials or equipment for the Services.
- 8.3 Any change or correction to any film, bromides, artwork and/or any printing surface supplied by the Client which is deemed necessary by USS to ensure correctly finished work shall be invoiced as an extra.

8.4

## **9. Access**

9.1 The Client shall ensure that USS has clear and free access to the work site at all times to enable them to undertake the Services. USS 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 USS.

**10. Accuracy of Clients Plans and Measurements**

10.1 USS shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, USS accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

10.2 in the event the Client gives information relating to measurements and quantities of the Goods required to complete the services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or USS places an order based on these measurements and quantities. USS accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

**11. Title**

11.1 USS and the Client agree that ownership of the Goods shall not pass until:

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

11.2 Receipt by USS 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.

11.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Client in accordance with clause 11.1 that the Client is only a bailee of the Goods and must return the Goods to USS on request.
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for USS and must pay to USS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for USS and must pay or deliver the proceeds to USS on demand.
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of USS and must sell, dispose of or return the resulting product to USS as it so directs.
- (e) the Client irrevocably authorises USS to enter any premises where USS believes the Goods are kept and recover possession of the Goods.
- (f) USS may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Client 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 USS.
- (h) USS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

12.2 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 all Goods that have previously been supplied and that will be supplied in the future by USS to the Client.

12.3 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 USS 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 12.3(a)(i) or 12.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, USS 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 USS;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of USS;
  - (e) immediately advise USS 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.
- 12.4 USS 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.
- 12.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by USS, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Client must unconditionally ratify any actions taken by USS under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 13. Security and Charge**
- 13.1 In consideration of USS agreeing to supply the Goods, 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).
- 13.2 The Client indemnifies USS from and against all USS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising USS' rights under this clause.
- 13.3 The Client irrevocably appoints USS and each director of USS as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.
- 14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 14.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify USS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Client must allow USS to inspect the Goods.
- 14.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 14.3 USS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, USS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. USS' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Client is a consumer within the meaning of the CCA, USS' liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If USS is required to replace the Goods under this clause or the CCA, but is unable to do so, USS may refund any money the Client has paid for the Goods.
- 14.7 If the Client is not a consumer within the meaning of the CCA, USS' 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 Client by USS at USS' sole discretion;
  - (b) limited to any warranty to which USS is entitled, if USS did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 14.8 Subject to this clause 14, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 14.1; and
  - (b) USS has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Client'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.
- 14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, USS 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 Goods;
  - (b) the Client using the Goods for any purpose other than that for which they were designed;
  - (c) the Client 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 Client failing to follow any instructions or guidelines provided by USS;
  - (e) fair wear and tear, any accident, or act of God.
- 14.10 USS may in its absolute discretion accept non-defective Goods for return in which case USS may require the Client to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.
- 14.11 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.
- 14.12 Notwithstanding anything contained in this clause if USS is required by a law to accept a return then USS will only accept a return on the conditions imposed by that law.

## **15. Intellectual Property**

- 15.1 Where USS has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of USS.
- 15.2 The Client warrants that all designs, specifications or instructions given to USS will not cause USS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify USS against any action taken by a third party against USS in respect of any such infringement.
- 15.3 The Client agrees that USS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which USS has created for the Client.
- 15.4 Drawings, sketches, painting, photographs, designs or typesetting furnished by USS, dummies, models or the like devices made or procured and manipulated by USS and negatives, positives, blocks, engravings, stencils, dies, plates or cylinders made from USS' original design, or from a design furnished by the Client, remain the exclusive property of USS unless otherwise agreed upon in writing.
- 15.5 Sketches and dummies submitted by USS on a speculative basis shall remain the property of USS. They shall not be used for any purpose other than that nominated by USS and no ideas obtained there from may be used without the consent of USS. USS shall be entitled to compensation from the Client for any unauthorised use of such sketches and dummies.
- 15.6 Disks, artwork and film supplied by the Client and/or other authorised persons remain the property of the Client. Unless otherwise indicated in writing USS shall assume these disks, artwork and film to be duplicate copies of the original.

## **16. Default and Consequences of Default**

- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at USS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.



- 16.2 If the Client owes USS any money the Client shall indemnify USS from and against all costs and disbursements incurred by USS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, USS' collection agency costs, and bank dishonour fees).
- 16.3 Further to any other rights or remedies USS may have under this Contract, if a Client has made payment to USS, 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 USS under this clause 16 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.
- 16.4 Without prejudice to USS' other remedies at law USS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to USS shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to USS becomes overdue, or in USS' opinion the Client will be unable to make a payment when it falls due;
  - (b) 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
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## **17. Compliance with Laws**

- 17.1 The Client and USS shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 17.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 17.3 The Client agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

## **18. Cancellation**

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

## **19. Privacy Policy**

- 19.1 All emails, documents, images or other recorded information held or used by USS is Personal Information, as defined and referred to in clause 19.3, and therefore considered Confidential Information. USS 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"). USS acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by USS that may result in serious harm to the Client, USS 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.

- 19.2 Notwithstanding clause 19.1, privacy limitations will extend to USS in respect of Cookies where transactions for purchases/orders transpire directly from USS's website. USS 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:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to USS when USS sends an email to the Client, so USS 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 USS's website.
- 19.3 The Client agrees for USS 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 USS.
- 19.4 The Client agrees that USS 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.
- 19.5 The Client consents to USS being given a consumer credit report to collect overdue payment on commercial credit.
- 19.6 The Client agrees that personal credit information provided may be used and retained by USS 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 Client'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 Client; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 19.7 USS 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.
- 19.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 19.3 above;
  - (b) name of the credit provider and that USS 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 USS has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of USS, 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).
- 19.9 The Client shall have the right to request (by e-mail) from USS:

- (a) a copy of the Personal Information about the Client retained by USS and the right to request that USS correct any incorrect Personal Information; and
  - (b) that USS does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 19.10 USS 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.
- 19.11 The Client can make a privacy complaint by contacting USS via e-mail. USS 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](http://www.oaic.gov.au).

**20. Building and Construction Industry Security of Payment Act 2002**

- 20.1 At USS' 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.
- 20.2 Nothing in this Contract is intended to have the effect 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.

**21. Service of Notices**

- 21.1 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.
- 21.2 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.

**22. Trusts**

- 22.1 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 USS may have notice of the Trust, the Client covenants with USS 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;
  - (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 USS (USS 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.

**23. Dispute Resolution**

- 23.1 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.

**24. General**

- 24.1 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.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which USS has its principal place of business, and are subject to the jurisdiction of the courts in Victoria.
- 24.3 Subject to clause 14 USS 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 USS of these terms and conditions (alternatively USS' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 24.4 USS may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 24.5 The Client cannot licence or assign without the written approval of USS.
- 24.6 USS 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 USS' sub-contractors without the authority of USS.
- 24.7 The Client agrees that USS 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 USS to provide Goods to the Client.
- 24.8 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.
- 24.9 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.