

OBA Australia – Terms & Conditions of Trading

1. Definitions

- 1.1 "OBA" means Outdoor Blinds Group Pty Ltd trading as Outdoor Blinds and Awnings Australia, its successors and assigns or any person acting on behalf of and with the authority of Outdoor Blinds Group Pty Ltd trading as Outdoor Blinds and Awnings Australia.
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting OBA to provide the Works 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 part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by OBA to the Client at the Client's request from time to time (where the context so permits the terms "Works" or "Materials" shall be interchangeable for the other).
- 1.4 "Price" means the Price payable (plus any GST where applicable) for the Works as agreed between OBA and the Client in accordance with clause 6 below.
- 1.5 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

- 2.1 The 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 any Works.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Client and OBA.
- 2.3 Any advice, recommendation, information, assistance or service provided by OBA in relation to Materials or Works supplied is given in good faith, is based on OBA own knowledge and experience and shall be accepted without liability on the part of OBA 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 Materials or Works.
- 2.4 In the event that OBA is required to provide the Works urgently or after the Warranty has expired, then OBA reserves the right to charge the Client a minimum call out fee based on OBA's standard hourly labour rate, plus travel, plus Materials, unless otherwise agreed between OBA and the Client.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that OBA 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 OBA 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 OBA in respect of the Works.
- 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 OBA; 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 OBA 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 OBA as a result of the Client's failure to comply with this clause.

5. Exclusions to Price

- 5.1 Unless otherwise agreed to, the Price does not include an allowance for:

- (a) architects;
- (b) engineering certification;
- (c) home warranty insurance;
- (d) traffic control; or
- (e) scaffolding, boom lift or other equipment.

6. Price and Payment

- 6.1 At OBA's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by OBA to the Client in respect of Works performed or Materials supplied; or
 - (b) OBA's quoted Price (subject to clause 6.2) which shall be binding upon OBA provided that the Client shall accept OBA's quotation in writing or digitally via Quotient website within ninety (90) days.
- 6.2 OBA reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, safety considerations, prerequisite work by any third party not being completed, change of design, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to OBA in the cost of labour or Materials which are beyond OBA's control.
- 6.3 Variations will be charged for on the basis of OBA's quotation, and will be detailed in writing, and shown as variations on OBA's invoice. The Client shall be required to respond to any variation submitted by OBA within ten (10) working days. Failure to do so will entitle OBA to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At OBA's sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by OBA, which may be:
- (a) on completion of the Works; or
 - (b) before commencement of the Works; or
 - (c) by way of progress payments in accordance with OBA's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
 - (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 OBA.
- 6.6 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 OBA.
- 6.7 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 OBA nor to withhold payment of any invoice because part of that invoice is indispute.
- 6.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to OBA an amount equal to any GST OBA must pay for any supply by OBA under this or any other contract for the sale of the Materials. 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.

7. Provision of the Works

- 7.1 Subject to clause 7.2 it is OBA's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that OBA claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond OBA's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify OBA that the site is ready.
- 7.3 At OBA's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 7.4 OBA may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 Any time specified by OBA for delivery of the Works is an estimate only and OBA 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 Works to be supplied at the time and place as was arranged between both parties. In the event that OBA is unable to supply the Works as arranged solely due to any action or inaction of the Client, then OBA shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

8. Risk

- 8.1 If OBA retains ownership of the Materials under clause 13 then:
- (a) where OBA is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by OBA or OBA's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where OBA is to both supply and install Materials then OBA shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests OBA to leave Materials outside OBA's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 8.3 OBA 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, OBA accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.4 The Client acknowledges that Materials supplied may:
- (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.
- 8.5 Timber is a hygroscopic material, subject to expansion and contraction, therefore OBA will accept no responsibility for gaps that may appear in the Works during prolonged dry periods.
- 8.6 Where OBA is required to install the Materials the Client warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and OBA 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.
- 8.7 Where the Client has supplied Materials for OBA to complete the Works, the Client acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the Materials. OBA shall not be responsible for any defects in the Works, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of Materials supplied by the Client.

9. Client's Responsibilities

- 9.1 It is the intention of OBA and agreed by the Client that it is the responsibility of the Client to provide and have erected scaffolding (or boom lift, or similar) to enable the Works to be undertaken (where in OBA's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed.

10. Access

- 10.1 The Client shall ensure that OBA has clear and free access to the worksite at all times to enable them to undertake the Works (including carrying out site inspections, gain signatures for required documents, and for the delivery and installation of the Works). OBA 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

OBA Australia – Terms & Conditions of Trade

negligence of OBA.

- 102 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other loading/unloading equipment as may be deemed necessary by OBA. The Client agrees to indemnify OBA against all costs incurred by OBA in recovering such vehicles in the event they become bogged or otherwise immovable.
- 103 Access for repairs at heights greater than standard step ladder reach is to be provided by the Client and must comply with Work Cover standards as per clause 9.1.

11. Compliance with Laws

- 11.1 The Client and OBA shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any work health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 11.2 The Client shall obtain (at the expense of the Client) all licenses and approvals (including Body Corporate where applicable) that may be required for the Works.
- 11.3 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.

12. Underground Locations

- 12.1 Prior to OBA commencing the Works the Client must advise OBA of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the site.
- 12.2 Whilst OBA will take all care to avoid damage to any underground services the Client agrees to indemnify OBA in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.

13. Title

- 13.1 OBA and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid OBA all amounts owing to OBA; and
 - (b) the Client has met all of its other obligations to OBA.
- 13.2 Receipt by OBA of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 13.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 13.1:
- (a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to OBA on request.
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for OBA and must pay to OBA the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
 - (c) the production of these terms and conditions by OBA shall be sufficient evidence of OBA's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with OBA to make further enquiries.
 - (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for OBA and must pay or deliver the proceeds to OBA on demand.
 - (e) the Client should not convert or process the Materials 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 OBA and must sell, dispose of or return the resulting product to OBA as it so directs.
 - (f) unless the Materials have become fixtures the Client irrevocably authorises OBA to enter any premises where OBA believes the Materials are kept and recover possession of the Materials.
 - (g) OBA may recover possession of any Materials in transit whether or not delivery has occurred.
 - (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of OBA.
 - (i) OBA may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

14. Personal Property Securities Act 2009 ("PPSA")

- 14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 14.2 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 Materials and/or collateral (account) – being a monetary obligation of the Client to OBA for Works – that have previously been supplied and that will be supplied in the future by OBA to the Client.
- 14.3 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 OBA 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 14.3(a)(i) or 14.3(a)(ii); - (b) indemnify, and upon demand reimburse, OBA 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 Materials charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of OBA;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of OBA;
 - (e) immediately advise OBA of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 14.4 OBA 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.
- 14.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 14.7 Unless otherwise agreed to in writing by OBA, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.8 The Client shall unconditionally ratify any actions taken by OBA under clauses 14.3 to 14.5.
- 14.9 Subject to any express provisions to the contrary (including those contained in this clause 14) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

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

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

- 16.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within fourteen (14) days of delivery notify OBA 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 Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow OBA to inspect the Materials or to review the Works provided. Additional inspection by OBA's product suppliers may be requested prior to acceptance of a warranty claim.
- 16.2 Where in the opinion of OBA, that the product should be repaired rather than replaced, that such repair is to take place at the installation site unless in OBA's opinion, the product should be repaired at the premises of the product's supplier.
- 16.3 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**).
- 16.4 OBA acknowledges that nothing in these terms and conditions purports to modify or exclude the Non- Excluded Guarantees.
- 16.5 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, OBA makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. OBA's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.6 If the Client is a consumer within the meaning of the CCA, OBA's liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.7 If OBA is required to replace any Materials under this clause or the CCA, but is unable to do so, OBA may refund any money the Client has paid for the Materials.
- 16.8 If OBA is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then OBA may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.
- 16.9 If the Client is not a consumer within the meaning of the CCA, OBA's liability for any defect or damage in the Materials is:
- (a) limited to the value of any express warranty or warranty document provided to the Client by OBA at OBA's sole discretion;
 - (b) limited to any warranty to which OBA is entitled, if OBA did not manufacture the Materials;
 - (c) otherwise negated absolutely.
- 16.10 Subject to this clause 16, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 16.1; and
 - (b) OBA has agreed that the Materials are defective; and
 - (c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 16.11 Notwithstanding clauses 16.1 to 16.10 but subject to the CCA, OBA 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 Materials;
 - (b) the Client using the Materials for any purpose other than that for which they were designed;
 - (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) repairs by the Client without OBA's prior approval;
 - (e) interference with the Works by the Client or any third party without OBA's prior approval;
 - (f) the Client failing to follow any instructions or guidelines provided by OBA;
 - (g) any Materials which have been installed, operated or maintained other than in accordance with OBA's or product supplier's instructions;
 - (h) any Materials that have been subject to misuse, abuse, negligence or accident;
 - (i) the Client is a bailor for reward of any Materials;
 - (j) any Materials purchased by the Client with the dominant purpose of reselling the product for profit;
 - (k) the damage of the Materials which arose as a result of the normal effect of being exposed to weather or as a result of atmospheric fallout;
 - (l) any damage resulting from the Client failing to clean the Materials and where dirt, salt and environmental pollution has acquired on the awing over a period of more than two (2) months;
 - (m) Materials have been left extended/projected whilst the premise is unattended whilst windy or during heavy rain;
 - (n) fair wear and tear, act of God, war or civil insurrection.
- 16.12 Notwithstanding anything contained in this clause if OBA is required by a law to accept a return then OBA will only accept a return on the conditions imposed by that law.
- 16.13 The Client accepts that repaired performed by non- authorised agents will void the warranty unless approved by OBA prior to the commencement of such repairs.
- 16.14 The warranty is available to the first initial end consumer only and thereafter becomes non- transferrable.
- 16.15 Any warranty applicable applies to products only and does not apply to any ancillary components of installation including, but not limited to faulty structures that those products are attached to.

17. Intellectual Property

- 17.1 Where OBA has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in OBA, and shall only be used by the Client at OBA's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of OBA.

OBA Australia – Terms & Conditions of Trade

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

17.3 The Client agrees that OBA may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which OBA has created for the Client.

18. Default and Consequences of Default

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

18.2 If the Client owes OBA any money the Client shall indemnify OBA from and against all costs and disbursements incurred by OBA in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, OBA's contract default fee, and bank dishonour fees).

18.3 Further to any other rights or remedies OBA may have under this contract, if a Client has made payment to OBA, 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 OBA under this clause 18 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.

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

- (a) any money payable to OBA becomes overdue, or in OBA'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 OBA;
- (c) the Client becomes insolvent or bankrupt, 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.

19. Cancellation

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

19.2 OBA may cancel any contract to which these terms and

conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice OBA shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to OBA for Works already performed. OBA shall not be liable for any loss or damage whatsoever arising from such cancellation.

19.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by OBA as a direct result of the cancellation (including, but not limited to, any loss of profits).

19.4 Cancellation of orders for products 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.

20. Privacy Act 1988

The Client agrees for OBA to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by OBA.

20.1 The Client agrees that OBA 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.

20.2 The Client consents to OBA being given a consumer credit report to collect overdue payment on commercial credit.

20.3 The Client agrees that personal credit information provided may be used and retained by OBA for the following purposes (and for other agreed purposes or required by):

- (a) the provision of Works; and/or
- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; 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 Works.

20.4 OBA 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.

20.5 The information given to the CRB may include:

- (a) personal information as outlined in 20.1 above;
- (b) name of the credit provider and that OBA 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 OBA has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of OBA, 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).

20.6 The Client shall have the right to request (by e-mail) from OBA:

- (a) a copy of the information about the Client retained by OBA and the right to request that OBA correct any incorrect information; and
- (b) that OBA does not disclose any personal information about the Client for the purpose of direct marketing.

20.7 OBA 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.

20.8 The Client can make a privacy complaint by contacting OBA via e-mail. OBA 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.

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 OBA may have notice of the Trust, the Client covenants with OBA 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 OBA (OBA 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. Building and Construction Industry Security of Payments Act 1999

24.1 At OBA's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.

24.2 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 Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

25. General

25.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which OBA has its principal place of business, and are subject to the jurisdiction of the Parramatta Local Court in New South Wales.

25.3 Subject to clause 16 OBA 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 OBA of these terms and conditions (alternatively OBA's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).

25.4 OBA may licence and/or assign all or any part of its

rights and/or obligations under this contract without the Client's consent.

25.5 The Client cannot licence or assign without the written approval of OBA.

25.6 The Client agrees that OBA may amend these terms and conditions by notifying 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 OBA to provide Works to the Client.

25.7 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.

25.8 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.