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## Jacmor Engineering Pty Ltd – Terms & Conditions of Trade

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### 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 "Jacmor" means Jacmor Engineering Proprietary Limited T/A Jacmor Engineering Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Jacmor Engineering Proprietary Limited T/A Jacmor Engineering 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 Jacmor 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 Jacmor 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 "Equipment" means all Equipment including any accessories supplied on hire by Jacmor to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Jacmor to the Client.
- 1.6 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Jacmor to the Client.
- 1.7 "Labour" or "Candidate" shall mean any individual sent by Jacmor to the Client for employment by the Client on a temporary, casual, or part time basis.
- 1.8 "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.
- 1.9 "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.**
- 1.10 "Price" means the Price payable (plus any GST where applicable) for the Goods and/or Equipment or Labour hire as agreed between Jacmor and the Client in accordance with clause 5 below.
- 1.11 "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 the Goods/Equipment.
- 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 Goods/Equipment on credit shall not take effect until the Client has completed a credit application with Jacmor and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods/Equipment request exceeds the Client's credit limit and/or the account exceeds the payment terms, Jacmor 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 Jacmor 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 Jacmor 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 Jacmor 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 Jacmor; 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 Jacmor 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 Jacmor as a result of the Client's failure to comply with this clause.

### 5. Price and Payment

- 5.1 At Jacmor's sole discretion the Price shall be either:  
(a) the Price as at the date of Delivery of the Goods/Equipment according to Jacmor's current price list; or  
(b) Jacmor's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

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- 5.2 Jacmor reserves the right to change the Price if a variation to Jacmor's quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to unforeseen circumstances such as current market value changes, or due to fluctuations in the currency exchange rate or as a result of increases to Jacmor in the cost of materials and labour) will be charged for on the basis of Jacmor's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 5.3 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by Jacmor, which may be:
- (a) on Delivery of the Goods/Equipment;
  - (b) before Delivery of the Goods/Equipment;
  - (c) by way of instalments/progress payments in accordance with Jacmor's payment schedule;
  - (d) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (e) the date specified on any invoice or other form as being the date for payment; or
  - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Jacmor.
- 5.4 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 Jacmor.
- 5.5 Jacmor may in its discretion allocate any payment received from the Client towards any invoice that Jacmor determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Jacmor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Jacmor, payment will be deemed to be allocated in such manner as preserves the maximum value of Jacmor's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.
- 5.6 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 Jacmor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Jacmor an amount equal to any GST Jacmor must pay for any supply by Jacmor under this or any other agreement for the sale of the Goods/hire of the Equipment. 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/Equipment

- 6.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at Jacmor's address; or
  - (b) Jacmor (or Jacmor's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.
- 6.2 At Jacmor's sole discretion the costs of delivery are:
- (a) included in the Price; or
  - (b) in addition to the Price; or
  - (c) for the Client's account.
- 6.3 The Client must take Delivery by receipt or collection of the Goods/Equipment whenever either is tendered for Delivery. In the event that the Client is unable to take Delivery of the Goods/Equipment as arranged then Jacmor shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.
- 6.4 Jacmor may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

### 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, Jacmor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Jacmor is sufficient evidence of Jacmor's rights to receive the insurance proceeds without the need for any person dealing with Jacmor to make further enquiries.
- 7.3 If the Client requests Jacmor to leave Goods outside Jacmor's 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 Jacmor is quality assured to ISO-9001 by third party Lloyd's registered quality assurance.
- 7.5 The Client acknowledges that Jacmor is only responsible for parts that are replaced by Jacmor and that in the event that other parts/materials, subsequently fail, the Client agrees to indemnify Jacmor against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 7.6 The Client acknowledges that Goods supplied may:
- (a) expand, contract or distort as a result of exposure to heat, cold, weather; and
  - (b) mark or stain if exposed to certain substances; and
  - (c) be damaged or disfigured by impact or scratching.
- 7.7 Any advice, recommendation, information, assistance or service provided by Jacmor in relation to Goods or Services supplied is given in good faith and shall be accepted without liability on the part of Jacmor 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.
- 7.8 In the event the Client supplies information relating to measurements and quantities of Goods required in completing the Services, it shall be the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Jacmor places an order based on these measurements and quantities. Jacmor accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.
- 7.9 Where Jacmor is required to install the Goods, the Client warrants that the structure of the premises or framing upon which these Goods are to be installed is sound and will sustain the installation and work incidental thereto, and that the Client must advise Jacmor of the precise location of all wiring or plumbing that may be hidden behind any surface at the installation site and clearly mark the same. Jacmor shall not

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be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or framing be unable to accommodate the installation or for any damage to hidden wiring or pipes (whether or not the Client is aware of their exact location).

**8. Access**

- 8.1 The Client shall ensure that Jacmor has clear and free access to the work site at all times to enable them to undertake the installation. Jacmor 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 Jacmor.
- 8.2 Jacmor reserves the right to refuse to enter the site to undertake the Services in the event that Jacmor believes the site to be unsafe. In this event, the Client agrees that it is their responsibility to ensure the site is made safe before Jacmor will enter the site, Jacmor shall not be liable for any delays caused, loss, damages, or costs however resulting from an unsafe site.

**9. Title to Goods**

- 9.1 Jacmor and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Jacmor all amounts owing to Jacmor; and
  - (b) the Client has met all of its other obligations to Jacmor.
- 9.2 Receipt by Jacmor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 9.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 9.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to Jacmor on request;
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Jacmor and must pay to Jacmor 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 Jacmor and must pay or deliver the proceeds to Jacmor 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 Jacmor and must sell, dispose of or return the resulting product to Jacmor as it so directs;
  - (e) the Client irrevocably authorises Jacmor to enter any premises where Jacmor believes the Goods are kept and recover possession of the Goods;
  - (f) Jacmor 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 Jacmor;
  - (h) Jacmor may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the 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/Equipment and/or collateral (account) – being a monetary obligation of the Client to Jacmor for Services – that have previously been supplied and that will be supplied in the future by Jacmor to the Client.
- 10.3 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 Jacmor may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, Jacmor 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/Equipment charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of Jacmor;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of Jacmor;
  - (e) immediately advise Jacmor of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4 Jacmor 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.
- 10.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by Jacmor, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Client must unconditionally ratify any actions taken by Jacmor under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary (including those contained in this clause 10), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

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- 10.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 10 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 10 will apply generally for the purposes of the PPSA.
- 11. Security and Charge**
- 11.1 In consideration of Jacmor agreeing to supply the Goods/Equipment, 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).
- 11.2 The Client indemnifies Jacmor from and against all Jacmor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Jacmor's rights under this clause.
- 11.3 The Client irrevocably appoints Jacmor and each director of Jacmor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.
- 12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 12.1 The Client must inspect the Goods/Equipment on Delivery and must within seven (7) days of Delivery notify Jacmor 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/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Jacmor to inspect the Goods/Equipment.
- 12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 12.3 Jacmor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Jacmor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. Jacmor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Client is a consumer within the meaning of the CCA, Jacmor's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If Jacmor is required to replace the Goods under this clause or the CCA, but is unable to do so, Jacmor may refund any money the Client has paid for the Goods.
- 12.7 If the Client is not a consumer within the meaning of the CCA, Jacmor's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by Jacmor at Jacmor's sole discretion;
  - (b) limited to any warranty to which Jacmor is entitled, if Jacmor did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 12.1; and
  - (b) Jacmor 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.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, Jacmor 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/Equipment;
  - (b) the Client using the Goods/Equipment for any purpose other than that for which they were designed;
  - (c) the Client continuing the use of the Goods/Equipment 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 Jacmor;
  - (e) fair wear and tear, any accident, or act of God.
- 12.10 Jacmor may in its absolute discretion accept non-defective Goods for return in which case Jacmor may require the Client to pay handling fees of up to twenty five percent (25%) of the value of the returned Goods plus any freight costs.
- 12.11 Non-stocklist items or Goods made to the Client's specifications are under no circumstances acceptable for credit or return.
- 12.12 Notwithstanding anything contained in this clause if Jacmor is required by a law to accept a return then Jacmor will only accept a return on the conditions imposed by that law.
- 13. Intellectual Property**
- 13.1 Where Jacmor has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of Jacmor. Under no circumstances may such designs, drawings and documents be used without the express written approval of Jacmor.
- 13.2 The Client warrants that all designs, specifications or instructions given to Jacmor will not cause Jacmor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Jacmor against any action taken by a third party against Jacmor in respect of any such infringement.
- 13.3 The Client agrees that Jacmor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Jacmor has created for the Client.
- 14. Default and Consequences of Default**
- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Jacmor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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- 14.2 If the Client owes Jacmor any money the Client shall indemnify Jacmor from and against all costs and disbursements incurred by Jacmor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Jacmor's contract default fee, and bank dishonour fees).
- 14.3 Further to any other rights or remedies Jacmor may have under this Contract, if a Client has made payment to Jacmor, 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 Jacmor under this clause 14 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.
- 14.4 Without prejudice to Jacmor's other remedies at law Jacmor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Jacmor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Jacmor becomes overdue, or in Jacmor'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 Jacmor;
  - (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.
- 15. Cancellation**
- 15.1 Without prejudice to any other remedies Jacmor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Jacmor may suspend or terminate the supply of Goods/Equipment to the Client. Jacmor will not be liable to the Client for any loss or damage the Client suffers because Jacmor has exercised its rights under this clause.
- 15.2 Jacmor may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods/Equipment or the supply of Labour at any time before the Goods/Equipment or the supply of Labour are due to be provided by giving written notice to the Client. On giving such notice Jacmor shall repay to the Client any money paid by the Client for either the Goods/Equipment or the supply of Labour. Jacmor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.3 In the event that the Client cancels Delivery of the Goods/Equipment or the supply of Labour the Client shall be liable for any and all loss incurred (whether direct or indirect) by Jacmor as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.4 Cancellation of orders for Goods/Equipment 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.
- 16. Privacy Policy**
- 16.1 All emails, documents, images or other recorded information held or used by Jacmor is Personal Information, as defined and referred to in clause 16.3, and therefore considered Confidential Information. Jacmor 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"). Jacmor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Jacmor that may result in serious harm to the Client, Jacmor 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.
- 16.2 Notwithstanding clause 16.1, privacy limitations will extend to Jacmor in respect of Cookies where transactions for purchases/orders transpire directly from Jacmor's website. Jacmor 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 Jacmor when Jacmor sends an email to the Client, so Jacmor 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 Jacmor's website.
- 16.3 The Client agrees for Jacmor 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 Jacmor.
- 16.4 The Client agrees that Jacmor 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 years.
- 16.5 The Client consents to Jacmor being given a consumer credit report to collect overdue payment on commercial credit.
- 16.6 The Client agrees that personal credit information provided may be used and retained by Jacmor for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods/Equipment; and/or
  - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/Equipment; 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/Equipment.
- 16.7 Jacmor 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.
- 16.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 16.3 above;
  - (b) name of the credit provider and that Jacmor 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 Jacmor has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of Jacmor, 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).
- 16.9 The Client shall have the right to request (by e-mail) from Jacmor:
- (a) a copy of the Personal Information about the Client retained by Jacmor and the right to request that Jacmor correct any incorrect Personal Information; and
  - (b) that Jacmor does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 16.10 Jacmor 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.
- 16.11 The Client can make a privacy complaint by contacting Jacmor via e-mail. Jacmor 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).

## **17. Confidentiality**

- 17.1 Jacmor and the Client agree to keep confidential any information in relation to the other party which is not in the public domain (including, but not limited to, trade secrets, processes, formulae, accounts, marketing, designs, databases and all other information held in any form).

## **18. Service of Notices**

- 18.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 18.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

## **19. Trusts**

- 19.1 If the 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 Jacmor may have notice of the Trust, the Client covenants with Jacmor 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 Jacmor (Jacmor 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.

## **20. Equipment Hire**

- 20.1 Equipment shall at all times remain the property of Jacmor and is returnable on demand by Jacmor. In the event that Equipment is not returned to Jacmor in the condition in which it was delivered Jacmor retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all Jacmor shall have right to charge the Client the full cost of replacing the Equipment.
- 20.2 The Client shall:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.
  - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
  - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by Jacmor to the Client.

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- 20.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, Jacmor's interest in the Equipment and agrees to indemnify Jacmor against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 20.4 Notwithstanding the above clauses, immediately on request by Jacmor the Client shall pay:
- (a) any lost hire charges Jacmor would have otherwise been entitled to for the Equipment, under this, or any other hire Contract; and
  - (b) any insurance excess payable in relation to a claim made by either the Client or Jacmor in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or Jacmor's.
- 21. General**
- 21.1 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.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which Jacmor has its principal place of business, and are subject to the jurisdiction of the courts of Melbourne in that state.
- 21.3 Subject to clause 12 Jacmor 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 Jacmor of these terms and conditions (alternatively Jacmor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment/Labour).
- 21.4 Jacmor may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 21.5 The Client cannot licence or assign without the written approval of Jacmor.
- 21.6 Jacmor 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 Jacmor's sub-contractors without the authority of Jacmor.
- 21.7 The Client agrees that Jacmor 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 Jacmor to provide Goods/Equipment to the Client.
- 21.8 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.
- 21.9 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.
- 21.10 Jacmor does not accept liquidated damages on any contract unless agreed otherwise in writing.
- 21.11 Sunset. The Client agrees, should the Contract be subject to partial payment when the Goods/Equipment are installed/commissioned or similar, such a period for installation/commissioning or similar shall not exceed 30 days from date of Delivery of Goods/Equipment with payment due 14 days following this period.

