
DEAN TRAILERS & EQUIPMENT PTY LTD – Terms & Conditions of Trade

1. DEFINITIONS

- 1.1. "DEANS" means DEAN TRAILERS & EQUIPMENT PTY LTD, ABN 50 685 333 797, ACN 685 333 797.
- 1.2. "CUSTOMER" means any individual, partnership, company or entity buying goods or receiving services, and if there is more than one customer, is a reference to each customer jointly and severally.
- 1.3. "GOODS" means all Goods and Services supplied by DEANS to the customer, at the customer's request (where the context so permits the terms 'Goods' and 'Services' shall be interchangeable for the other)
- 1.4. "PRICE" means the price payable for the Goods as agreed between DEANS and the customer in accordance with clause 5
- 1.5. "DOA" means a DEANS Order Acknowledgement document issued by DEANS to Customer to confirm details of Customer Order. DOA may only be amended by DEANS in writing.
- 1.6. "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999 (Cth.)"
- 1.7. "TOT" means these Terms and Conditions of Trade.

2. AGREEMENT / ACCEPTANCE

- 2.1. The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions when the customer places an order for or accepts delivery of the goods.
- 2.2. The TOT may only be amended with DEANS consent in writing and shall prevail to the extent of an inconsistency with any other document or agreement between the Customer and DEANS.
- 2.3. The Customer acknowledges that the supply of Goods on credit shall not take effect until DEANS approves the Customer's credit application.
- 2.4. The Customer acknowledges and agrees where the customer does not elect to control their purchases by a Purchase Order or other document accepted by DEANS, then all purchases made by the Customer and/or any third party acting on behalf of the Customer to which are charged to the Customer's credit account, shall remain payable by the Customer.
- 2.5. If the supply of Goods request exceeds the customer's credit limit and/or the account exceeds the payment terms, DEANS reserves the right to refuse delivery until the customer returns to compliance with DEANS credit terms.
- 2.6. The Customer acknowledges and accepts that the supply of:
 - a) Services is at DEANS sole discretion; and/or
 - b) Goods for accepted orders may be subject to availability.
- 2.7. The Customer accepts and acknowledges Deans' right to refuse in whole or in part any countermands or alterations to specifications requested by the Customer after acceptance of the order.
- 2.8. Any advice, recommendation, information, assistance or service provided by DEANS in relation to Goods supplied is given in good faith is based on DEANS own knowledge and experience and shall be accepted without liability on the part of DEANS, and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods.
- 2.9. None of DEANS agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by a director of DEANS in writing, nor is DEANS bound by any such unauthorised statements.
- 2.10. The customer accepts and acknowledges that all descriptions of Goods in any document issued by DEANS are approximate only and shall not form part of any sale by description.
- 2.11. The Customer accepts and agrees, if the Customer wishes to retain sole rights to their design patterns, the DEANS will require their specific pattern contract to be completed prior to placing the order with DEANS. If there are any inconsistencies between any specific pattern contract and this TOT, the TOT shall prevail.

3. ERRORS AND OMISSIONS

- 3.1. The Customer acknowledges and accepts that DEANS 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 DEANS 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 DEANS 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 DEANS; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

4. CHANGE IN CONTROL

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

5. PRICE AND PAYMENT

- 5.1. At DEANS sole discretion the Price shall be either:
 - a) As indicated on any invoice or DOA provided by DEANS to the Customer; or
 - b) The Price as at the date of delivery of the Goods according to DEANS then current price list; or
 - c) DEANS quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or for a period of thirty (30) days whichever is longer.
- 5.2. DEANS reserves the right to change the Price:
 - a) If the customer requests a variation to DEANS quotation; or
 - b) Where due to additional works being required due to hidden or unidentifiable difficulties which are only discovered once the works have commenced (including but not limited to the discovery of any variation made in writing or verbally at the request of the Customer); or
 - c) Where due to increases to DEANS in the cost of materials, and where such materials are imported specifically for the Customer this shall include additional freights costs, customs charges, and foreign exchange fluctuations.
- 5.3. Customer agrees that DEANS may require in its sole discretion, the Customer to provide a non-refundable deposit to assure payment of the Customer obligations to DEANS.
- 5.4. Time for payment of the Goods will be on delivery of the Goods unless otherwise agreed in writing by DEANS or the Customer has an approved Credit Account with DEANS.
- 5.5. Payment may be made by cash, bank cheque, electronic/online banking (EFT), credit card (plus a surcharge if applicable), or by any other method as agreed to between the Customer and DEANS. However, Payments will not be accepted by DEANS until funds are settled and visible on the DEANS bank statement.
- 5.6. Unless otherwise stated the Price does not include GST.
- 5.7. Customer must also pay to DEANS an amount equal to any GST DEANS must pay for any supply by DEANS under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off any other amounts, at the same time and on the same basis as the Customer pays the Price.
- 5.8. The Customer must also pay any other taxes or duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 5.9. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by DEANS nor to withhold payment of any invoice because part of that invoice is in dispute.

6. PAYMENT TERMS

- 6.1. Credit accounts may be granted upon completion and approval of the DEANS credit application. If approved, payment is due 30 Days End of Month, unless otherwise agreed in writing, at a credit limit specified in the approval document.
- 6.2. Where DEANS withdraws any credit facility extended to the Customer, any amount outstanding at the time shall become immediately due and payable.

7. DELIVERY OF GOODS

- 7.1. Delivery of the Goods is taken to occur at the time that:
 - a) The Customer or the Customer's nominated carrier takes possession of the Goods at DEANS address; or
 - b) DEANS or DEANS nominated carrier delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.2. At DEANS sole discretion the cost of delivery is in addition to the Price.
- 7.3. The Customer accepts and acknowledges that unless specified in writing by DEANS any freight required is in addition to the Price. The Customer further accepts that if DEANS is required to physically deliver the Goods then it will be done at the best rate DEANS can arrange and will be charged as an additional cost together with an administration fee.
- 7.4. The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. If the Customer is unable to take delivery of the Goods as arranged, then DEANS shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.5. DEANS may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in the TOT.
- 7.6. Any time or date given by DEANS to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and DEANS will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

8. RISK

- 8.1. Risk of damage to, or loss of, the Goods passes to the Customer on delivery and the Customer must insure the Goods on or before delivery.
- 8.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, DEANS is entitled to receive all insurance proceeds payable for the Goods. The production of the TOT by DEANS is enough evidence of DEANS rights to receive all insurance proceeds without the need for any person dealing with DEANS to make further enquiries.

- 8.3. If the Customer requests DEANS to leave Goods outside DEANS premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 8.4. Where the Customer is to supply DEANS with any design specifications (including but not limited to Computer-Aided Design (CAD) drawings or special requirements) the Customer shall be responsible for providing accurate data. DEANS shall not be liable whatsoever for any errors in the goods that are caused by incorrect or inaccurate data being supplied by the Customer.
- 8.5. In conjunction with clause 8.4, it shall be the Customer's responsibility to provide sufficient information to enable DEANS to execute the order.
- 8.6. The Customer accepts that DEANS has the right to determine the most appropriate and effective manner of providing the Goods and of satisfying the Customer's expectations in relation to the Goods.
- 8.7. The Customer acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in DEANS or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by DEANS.
- 8.8. The Customer warrants that any structures or equipment to which the Goods are to be affixed/used with are able to withstand the installation/use of the Goods and are of suitable capacity to handle the Goods once attached.
- 8.9. The Customer acknowledges that DEANS is only responsible for parts that are provided or replaced by DEANS and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and are found to be the source of the failure, the Customer agrees to indemnify DEANS against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 8.10. The Customer agrees to release and indemnify DEANS, their officers, directors, agents, employees and shareholders and suppliers of any and all liabilities, claims, demands or actions or causes of action whatsoever including any liability imposed by statute, arising out of any damage, loss or injury to the Customer or third parties due to/from the use of the Goods, or from some other cause.

9. CUSTOMER'S RESPONSIBILITY & ACKNOWLEDGEMENT

- 9.1. The Customer acknowledges and accepts that the supply of the Goods for accepted orders may be subject to availability and if, for any reason, Goods are not/cease to be available, DEANS reserves the right to vary the Price with alternative Goods as per clause 5.2. DEANS also reserves the right to halt all Goods until such time as DEANS and the Customer agree to such changes.
- 9.2. Where the Customer has supplied materials for DEANS to complete the Goods, the Customer acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. DEANS shall not be responsible for any defects in the Goods, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Customer.
- 9.3. Where the Customer has left a trailer with DEANS for repair, restoration, or modification or for DEANS to perform any other Service in relation to the item, it shall be at the sole risk of the Customer. DEANS shall not be liable for any loss or damage to any trailer whilst in the care of DEANS, it shall be the responsibility of the Customer to ensure that the trailer is adequately insured, or at all (including but not limited to, the perils of accident, fire, theft and burglary, severe weather and all other usual risks) whilst store on DEANS premises.
- 9.4. The Customer acknowledges that it is the Customer's responsibility to remove all personal/valuable items from the trailer prior to DEANS carrying out their services. DEANS shall not be liable in the event of any apparent loss or damage to personal/valuable items left in the trailer.
- 9.5. Whilst DEANS shall endeavour to modify the trailer to the exact specifications or instructions of the Customer, DEANS can offer no guarantee that any technique used will provide the exact effect desired by the Customer.
- 9.6. If in the opinion of DEANS the Customer's requests for modifications are deemed to be unsuitable and unsafe to proceed with, then DEANS reserves the right to halt the Services until such time as the Customer authorises DEANS in writing to proceed with the modifications and accepts that DEANS shall not be responsible for any defects in the Services, any loss or damage to the trailer (or any part thereof), howsoever arising from the modification instructions supplied by the Customer. DEANS shall not be responsible for any damage to the trailer, not detected by DEANS, where the inspection has not been conducted by DEANS staff.

10. INSURANCE CLAIMS

- 10.1. If the Customer has insurance or other contractual arrangements for the payment of charges due under this contract, this will not affect the Customer's obligation to pay all charges due under this contract, except that the Customer's liability will be reduced to the extent that payments are made to DEANS from other such sources. The Customer also agrees that they shall be liable and make payment when due for any of the insurance excess where necessary.
- 10.2. Any work undertaken which is part of an insurance claim is undertaken with the understanding that should the claim be declined, or payment of the claim delayed, the Customer is liable for payment of the full Price.

11. ACCESS

11.1. If DEANS agrees to perform services at Customer site, the Customer shall ensure that DEANS has always clear and free access to the work site to enable them to undertake the Services. DEANS 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 DEANS.

12. TITLE

12.1. DEANS and the Customer agree that ownership of the Goods shall not pass until:

- a) The Customer has paid DEANS all amounts owing to DEANS; and
- b) The Customer has met all its other obligations to DEANS.

12.2. Receipt by DEANS 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.

12.3. It is further agreed that:

- a) Until ownership of the Goods passes to the Customer in accordance with clause 12.1 that the Customer is only a bailee of the Goods and must return the Goods to DEANS on request.
- b) The Customer holds the benefit of the Customer's insurance of the Goods on trust for DEANS and must pay to DEANS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- c) The Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for DEANS and must pay or deliver the proceeds to DEANS on demand.
- d) The Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of DEANS and must sell, dispose of or return the resulting product to DEANS as it so directs.
- e) The Customer irrevocably authorises DEANS to enter any premises where DEANS believes the Goods are kept and recover possession of the Goods.
- f) DEANS may recover possession of any Goods in transit whether delivery has occurred or not.
- g) The Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of DEANS.
- h) DEANS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

13. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")

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

13.2. Upon assenting to the TOT in writing the Customer acknowledges and agrees that the TOT 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 DEANS to the Customer.

13.3. The Customer 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 DEANS 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 documents required to be registered by the PPSA; or
 - (iii) Correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);
- b) Indemnify, and upon demand reimburse, DEANS for all expenses incurred in registering a financing statement or a 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 DEANS;
- 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 DEANS;
- e) Immediately advise DEANS of any material change in its business practices of selling the Goods which would result in a change proceeds derived from such sales.

13.4. DEANS and the Customer agree that sections 96, 115, and 125 of the PPSA do not apply to the security agreement created by the TOT.

13.5. The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

13.6. The Customer waives their rights as a grantor and/or debtor under sections 142 and 143 of the PPSA.

13.7. Unless otherwise agreed to in writing by DEANS, the Customer waives their rights to receive a verification statement in accordance with section 157 of the PPSA.

13.8. The Customer must unconditionally ratify any actions taken by DEANS under clauses 13.3 to 13.5.

13.9. Subject to any express provisions to the contrary nothing in the TOT is intended to have the effect of contracting out any of the provisions of the PPSA.

14. SECURITIES AND CHARGE

- 14.1. In consideration of DEANS agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under the TOT (including, but not limited to, the payment of any money).
- 14.2. The Customer indemnifies DEANS from and against all DEANS costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising DEANS rights under this clause.
- 14.3. The Customer irrevocably appoints DEANS and each director of DEANS as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.

15. DEFECTS, WARRANTIES AND RETURNS, COMPETITION AND CONSUMER ACT 2010(CCA)

- 15.1. A warranty period of five (5) years applies to the trailer frame and drawbar, and twelve (12) months on all other Goods manufactured by DEANS as set out by this clause 15 and any applicable DEANS warranty manual.
- 15.2. The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify DEANS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow DEANS to inspect the Goods.
- 15.3. Under applicable 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 the TOT (Non-Excluded Guarantees).
- 15.4. DEANS acknowledges that nothing in the TOT purports to modify or exclude the Non-Excluded Guarantees.
- 15.5. Except as expressly set out in the TOT or in respect of the Non-Excluded Guarantees, DEANS makes no warranties or other representations under the TOT including but not limited to the quality or suitability of the Goods. DEANS liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.6. If the Customer is a consumer within the meaning of the CCA, DEANS liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.7. If DEANS is required to replace the Goods under this clause or the CCA, but is unable to do so, DEANS may refund any money the Customer has paid for the Goods.
- 15.8. If the Customer is not a consumer within the meaning of the CCA, DEANS 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 Customer by DEANS at DEANS sole discretion which shall detail:
 - (i) the warranty shall cease and DEAN shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without DEANS consent; and
 - (ii) in respect of all claims DEANS shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Customer's claim; or
 - b) limited to any warranty to which DEANS is entitled, if DEANS did not manufacture the Goods;
 - c) otherwise negated absolutely.
- 15.9. Subject to this clause 15, returns will only be accepted provided that:
- a) The Customer has complied with the provisions of clause 15.1; and
 - b) DEANS has agreed that the Goods are defective; and
 - c) The Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - d) The Goods are returned in as close a condition to that they were delivered as is possible.
- 15.10. Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, DEANS 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 Customer failing to properly maintain or store any Goods;
 - b) The Customer using the Goods for any purpose other than that for which they were designed;
 - c) The Customer 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 Customer failing to follow any instructions or guidelines provided by DEANS;
 - e) Fair wear and tear, any accident, or act of God.
- 15.11. DEANS may in its absolute discretion accept non-defective Goods for return in which case DEANS may require the Customer to pay handling fees of up to twenty-five percent (25%) of the value of the returned Goods plus any freight costs.
- 15.12. Notwithstanding anything contained in this clause if DEANS is required by law to accept a return the DEANS will only accept a return on the conditions imposed by that law.

16. INTELLECTUAL PROPERTY

- 16.1. Where DEANS has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of DEANS. Under no circumstances may such designs, drawings and documents be used without the express written approval of DEANS. All tooling, materials, industrial property or the like (including that provided by the Customer), used in the manufacture or manufacturing process of the Goods will be and remain the property of DEANS.
- 16.2. The Customer warrants that all designs, specifications or instructions given to DEANS will not cause DEANS to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify DEANS against any action taken by a third party against DEANS in respect of any such infringement.
- 16.3. The Customer agrees that DEANS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which DEANS has created for the Customer.

17. DEFAULT AND CONSEQUENCES OF DEFAULT

- 17.1. 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 DEANS sole discretion such interest shall compound monthly at such a rate) after as well as before any judgement.
- 17.2. If the Customer owes DEANS any money the Customer shall indemnify DEANS from and against all costs and disbursements incurred by DEANS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, DEANS contract default fees, and bank dishonour fees).
- 17.3. Further to any other rights or remedies DEANS may have under this contract, if a Customer has made payment to DEANS, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by DEANS under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 17.4. Without prejudice to any other remedies DEANS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under this TOT, DEANS may suspend or terminate the supply of Goods to the Customer. DEANS will not be liable to the Customer for any loss or damage the Customer suffers because DEANS has exercised its rights under this clause.
- 17.5. Without prejudice to DEANS other remedies at law DEANS shall be entitled to cancel all or any part of any order of the Customer which remains unfilled and all amounts owing to DEANS shall, whether due for payment, become immediately payable if:
 - a) Any money payable to DEANS becomes overdue, or in DEANS opinion the Customer will be unable to make a payment when it falls due;
 - b) The Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

18. COMPLIANCE WITH LAWS

- 18.1. The Customer and DEANS shall comply with the provisions of all laws and regulations that apply to the Goods.
- 18.2. The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

19. DISPUTE RESOLUTION

- 19.1. If a dispute arises between the parties to this contract, then either party shall send 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 may be represented by a person having authority to agree to a resolution to the dispute. If 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 Rules for the Conduct of Commercial Arbitration.

20. CANCELLATION

- 20.1. DEANS may cancel any contract to which this TOT applies or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice DEANS, shall repay to the Customer any money paid by the Customer for the Goods. DEANS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.2. If the Customer cancels delivery of the Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by DEANS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.3. Cancellation of orders for Goods made to the Customer's specifications, or for non-stock list items, will not be accepted once production has commenced, or an order has been placed.

21. PRIVACY AND SECURITY INCLUDING THE PRIVACY ACT 1988

- 21.1. The Customer agrees for DEANS to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by DEANS.
- 21.2. The Customer agrees that DEANS may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- To assess an application by the Customer; and/or
 - To notify other credit providers of a default by the Customer; and/or
 - To exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - To assess the creditworthiness of the Customer.
- 21.3. The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers can exchange under the Privacy Act 1988.
- 21.4. The Customer consents to DEANS being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 21.5. The Customer agrees that personal credit information provided may be used and retained by DEANS for the following purposes (and for other purposes as shall be agreed between the Customer and DEANS or required by law from time to time):
- The provision of Goods; and/or
 - The marketing of Goods by DEANS, its agents or distributors; and/or
 - Analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of the Goods; and/or
 - Processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - Enabling the daily operation of the Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 21.6. DEANS may give information about the Customer to a credit reporting agency for the following purposes:
- To obtain a consumer credit report about the Customer; and/or
 - Allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 21.7. The information given to the credit reporting agency may include:
- Personal (the customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - Details concerning the Customer's application for credit or commercial credit and the amount requested;
 - Advice that DEANS is a current credit provider to the Customer;
 - Advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection has been started;
 - That the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - Information that, in the opinion of DEANS, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
 - Advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - That credit provided to the Customer by DEANS has been paid or otherwise discharged.
- 21.8. Both Parties agree to comply with the *Privacy Act 1988 (Cth)*, including the Australian Privacy Principles (APPs) and any amendments, such as the *Privacy and Other Legislation Amendment Act 2024*.

22. UNPAID SELLER RIGHTS

- 22.1. Where the Customer has left any item with DEANS for repair, modification, exchange or for DEANS to perform any other service in relation to the item and DEANS has not received or been tendered the whole of any monies owing to it by the Customer, DEANS shall have, until all monies owing to DEANS are paid:
- A lien on the item; and
 - The right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 22.2. The lien of DEANS shall continue despite the commencement of proceedings, or judgement for any monies owing to DEANS having been obtained against the Customer.

23. GENERAL

- 23.1. The failure by DEANS to enforce any provision of the TOT shall not be treated as a waiver of that provision, nor shall it affect DEANS right to subsequently enforce that provision. If any provision of the TOT shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

- 23.2. The TOT and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the Court in that state.
- 23.3. Subject to Clause 15, DEANS shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by DEANS of the TOT (alternatively DEANS liability shall be limited to damages which under no circumstances shall exceed the price of the Goods).
- 23.4. The Customer shall not be entitled to set off against, or deduct from the price, any sums owed or claimed to be owed to the Customer by DEANS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 23.5. DEANS may licence and/or assign all or any part of its rights and/or obligations without the Customer's consent.
- 23.6. The Customer cannot licence or assign without the written consent of DEANS.
- 23.7. DEANS may elect to sub-contract out all or any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of DEANS sub-contractors without the authority of DEANS.
- 23.8. The Customer agrees that DEANS may amend the TOT at any time. If DEANS makes a change to the TOT, then that change will take effect from the date on which DEANS published the new TOT and/or notifies the Customer of such change.
- 23.9. 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.
- 23.10. The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.