

- 1. Definitions**
- 1.1 "DMD" means DMD (WA) Pty Ltd ABN 72 088 275 147, its successors and assigns or any person acting on behalf of and with the authority of DMD (WA) Pty Ltd
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting DMD to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- if there is more than one Client, is a reference to each Client jointly and severally; and
 - if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - if the Client is a partnership, it shall bind each partner jointly and severally; and
 - includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "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.
- 1.4 "Goods" means all Goods or Services supplied by DMD 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 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between DMD and the Client in accordance with clause 5 below.
- 1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when using DMD's 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 making enquiries via the website.**
- 1.7 "GST" means Goods and Services Tax (GST) as defined within the 'A New Tax System (Goods and Services Tax) Act 1999'.
- 2. Acceptance**
- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 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 DMD.
- 2.3 Where colour matching is required, the Client agrees to supply information and samples regarding the correct colour;
- 2.4 Any advice, recommendation, information, assistance or service provided by DMD in relation to Goods and Services supplied is given in good faith, is based on DMD's own knowledge and experience and shall be accepted without liability on the part of DMD 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
- 2.5 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with DMD and it has been approved with a credit limit established for the account.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Western Australia) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 3. Pricing**
- 3.1 Prices quoted for the supply of goods and services exclude GST and any other taxes or duties imposed on or in relation to the goods and services. Any such GST and other taxes or duties are additionally at the Client's account.
- 3.2 At DMD's sole discretion, or as otherwise agreed between the parties the Price shall be either:
- as indicated on any invoice provided by DMD to the Client; or
 - DMD's quoted price (subject to clause 3.3) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days.
 - May be estimate only (subject to clause 3.3) which is a guide to potential price for goods or services.
- 3.3 If the Client requests any variation to the Agreement, DMD may increase the price to account for the variation.
- 3.4 Subject to clause 3.3, where there is any change in the costs incurred by DMD in relation to goods or services, DMD may vary its price to take into account of any such change, by notifying the Client.
- 3.5 At DMD's sole discretion, a non-refundable deposit may be required. If required, DMD will notify the Client.
- 4. Payment**
- 4.1 The time for payment for the Goods is of the essence.
- 4.2 The Price will be payable by the Client on the date/s determined by DMD, which may be:
- on completion of the services;
 - on the Delivery of the Goods and/or Services;
 - before Delivery of the Goods and/or Services;
 - fourteen (14) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - by way of installments/progress payments in accordance with DMD's payment schedule;
 - the date specified on any invoice or other form as being the date for payment; or
 - if failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by DMD.
- 4.3 Payment may be made by electronic/on-line banking, credit card or by any other method as agreed to between the Client and DMD.
- 4.4 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 DMD nor to withhold payment of any invoice because part of that invoice is in dispute.
- 4.5 Payment made by credit card will incur a surcharge up to 2%.
- 4.6 At DMD's sole discretion, a non-refundable deposit may be required.
- 4.7 DMD may in its discretion allocate any payment received from the Client towards any invoice that DMD determines and may do so at the time of receipt or at any time afterwards. On any default by the Client DMD may re-allocate any payments previously received and allocated. In the absence of any payment allocation by DMD, payment will be deemed to be allocated in such manner as preserves the maximum value of DMD's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 4.7 Prices quoted for supply of goods & services exclude GST and any other taxes or duties imposed on or in relation to the goods & services. In addition to the Price the Client must pay to DMD an amount equal to any GST DMD must pay for any supply by DMD under this or any other contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 4.8 Payment terms may be revoked or amended at DMD's sole discretion, upon giving the Client prior written notice.
- 5. Delivery of Goods and/or Services**
- 5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- the Client or the Client's nominated carrier takes possession of the Goods at DMD's address; or
 - Delivery ("Delivery") of the Goods and/or Services is taken to occur at the time that DMD (or DMD's nominated carrier) delivers the Goods and/or Services to the Client's nominated address even if the Client is not present at the address.
- 5.2 At DMD's sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.
- 5.3 DMD may deliver the Goods and/or Services in separate installments. Each separate installment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.4 Any time specified by DMD for delivery of the Goods and/or Services is an estimate only and DMD 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 attempt to enable the Goods and/or Services to be delivered at the time and place as was arranged between both parties. In the event that DMD is unable to supply the Goods and/or Services as agreed solely due to any action or inaction of the Client, then DMD shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6. Personal Property Securities Act 2009 ("PPSA")**
- 6.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 6.2 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 and/or collateral (account) – being a monetary obligation of the Client to DMD for Services – that have previously been supplied and that will be supplied in the future by DMD to the Client.
- 6.3 The Client undertakes to:
- 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 DMD may reasonably require to;
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA; or
 - correct a defect in a statement referred to in clause 6.3(a)(i) or 6.3(a)(ii);
 - indemnify, and upon demand reimburse, DMD for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - not register a financing change statement in respect of a security interest without the prior written consent of DMD;
 - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of DMD;
 - immediately advise DMD of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 6.4 DMD 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.
- 6.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 120, 122(3)(g) and 122(4) of the PPSA.
- 6.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and DMD of the PPSA.
- 6.7 Unless otherwise agreed to in writing by DMD, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 6.8 The Client must unconditionally ratify any actions taken by DMD under clauses 6.3 to 6.5.
- 6.9 Subject to any express provisions to the contrary (including those contained in this clause 6.6) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 7. Collateral & Assignment**
- 7.1 The Client hereby charges all its right, title and interest in the property or properties referred to in the Client's Credit Application and also any property or properties that it owns currently or may acquire in the future solely or jointly or have or become to have a beneficial interest in, in favour of DMD, with the due and punctual observance and performance of all the obligations of the Client. The Client indemnifies DMD against all expenses and legal costs (on a solicitor/own client basis) for preparing, loading and removing any caveat.
- 7.2 The Client hereby acknowledges that DMD may at its discretion register and lodge a caveat(s) on such property or properties in respect of the interests conferred on it under clause 7.1. Such registration of a caveat by DMD over the Client's property or properties must not be challenged by the Client in any way whatsoever, and the Client agrees not to take any steps in filing a "lapsing notice" via the Land Titles Office to have the caveat removed, until such time that the Client has paid all monies owing by it to DMD claimed from time to time.
- 8. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 8.1 The Client must inspect the goods or services on delivery and must within seven (7) days of delivery notify DMD 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 or services as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow DMD to inspect the goods or services.
- 8.2 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**).
- 8.3 DMD acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 8.4 If the Client is a consumer within the meaning of the CCA, DMD's liability is limited to the extent permitted by section 64A of Schedule 2.
- 8.5 If DMD is required to replace the Goods under this clause or the CCA, but is unable to do so, DMD may refund any money the Client has paid for the Goods.
- 8.6 Subject to this clause 8.8, returns will only be accepted provided that:
- the Client has complied with the provisions of clause 8.1; and
 - DMD has agreed that the goods or services are defective; and
 - the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 8.7 DMD may in its absolute discretion accept non-defective Goods for return in which case DMD 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.
- 8.8 Notwithstanding anything contained in this clause if DMD is required by a law to accept a return then DMD will only accept a return on the conditions imposed by that law.
- 8.9 Subject to clause 8.1, customised, or non-stock list items or Incidental Items made or ordered to the Client's specifications are not acceptable for credit or return.
- 9. Default and Consequences of Default**
- 9.1 If the Client defaults in payment by the due date of any amount payable to DMD, then all monies becomes immediately due and payable upon notice to the Client, to DMD, without prejudice to any of its other accrued or contingent rights:
- 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 DMD's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment;
 - charge the Client a late payment administration fee equal to 10% of the invoice to a maximum of \$200 plus GST;
 - charge the Client for, and the Client must indemnify DMD from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods; cease or suspend supply of any further goods or services to the Client
 - by written notice to the Client, terminate any uncompleted contract with the Client.
- 9.2 Clauses 9.1(d) and 9.1(e) may also be relied upon, at DMD's option:
- where the Client is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
 - where the Client is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Client.
- 10. Title**
- 10.1 DMD and the Client agree that ownership of the Goods shall not pass until:
- the Client has paid DMD all amounts owing to DMD and
 - the Client has met all of its other obligations to DMD
- 10.2 Receipt by DMD 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.
- 10.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 10.1
- the Client is only a bailee of the Goods and must return the Goods to DMD on request.
 - the Client holds the benefit of the Client's insurance of the Goods on trust for DMD and must pay to DMD the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - 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 DMD and must pay or deliver the proceeds to DMD on demand.
 - 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 DMD and must sell, dispose of or return the resulting product to DMD as it so directs.
 - the Client irrevocably authorises DMD to enter any premises where DMD believes the Goods are kept and recover possession of the Goods.
 - DMD may recover possession of any Goods in transit whether or not delivery has occurred.
 - 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 DMD
 - DMD may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 11. Cancellation**
- 11.1 Without prejudice to any other remedies that either party may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the party may suspend or terminate the supply of Goods. DMD will not be liable to the Client for any loss or damage the Client suffers because DMD has exercised its rights under this clause.
- 11.2 DMD may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice DMD shall repay to the Client any money paid by the Client for the Goods. DMD shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 11.3 In the event that the Client cancels delivery of any Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by DMD as a direct result of the cancellation (including, but not limited to, any loss of profits and costs of allocated labour).

- 11.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stock list items or modified goods, will definitely not be accepted once production has commenced, or an order has been placed.
- 11.5 At DMD sole discretion a Restocking fee may apply and the Client shall be liable for any and all loss incurred (whether direct or indirect) by DMD as a direct result of the rescheduling previously appointed work. (including, but not limited to, any loss of profits and costs of allocated labour).
- 12. Risk**
- 12.1 If DMD retains ownership of the Materials under clause 10 then:
- (a) where DMD 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 either:
- (i) the Client or the Client's nominated carrier takes possession of the Materials at DMD's address; or
- (ii) the Materials are delivered by DMD or DMD's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- (b) where DMD is to both supply and install Materials then DMD 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.
- 12.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, DMD is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by DMD is sufficient evidence of DMD's rights to receive the insurance proceeds without the need for any person dealing with DMD to make further enquiries.
- 12.3 DMD 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, DMD accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 12.5 Where the Client has supplied materials for DMD to complete the Services, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. DMD shall not be responsible for any defects in the Services, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 12.6 The Client acknowledges that any damage to the Goods supplied to DMD by the Client or a third party shall be the responsibility of the Client with any repair work being a variation to the original scope of work.
- 12.7 The Client acknowledges that Goods supplied may exhibit variations in shade tone, colour, texture, markings, veining, surface and finish, and may fade or change colour over time. DMD will make every effort to match batches/samples of the Goods supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 13. Privacy**
- 13.1 All emails, documents, images or other recorded information held or used by DMD is Personal Information, as defined and referred to in clause 13.2, and therefore considered Confidential Information. DMD 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 IIC 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"). DMD acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by DMD that may result in serious harm to the Client, DMD 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.
- 13.2 The Client agrees for DMD 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 DMD.
- 13.3 Notwithstanding clause 13.1, privacy limitations will extend to DMD in respect of Cookies where transactions for purchases/orders transpire directly from DMD's website. DMD 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 DMD when DMD sends an email to the Client, so DMD may collect and review that information ("Collectively Personal Information")
- 13.4 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 DMD's website.
- 13.3 The Client agrees that DMD 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.
- 13.4 The Client consents to DMD being given a consumer credit report to collect overdue payment on commercial credit.
- 13.5 The Client agrees that personal credit information provided may be used and retained by DMD for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (d) enabling the collection of amounts outstanding in relation to the Goods.
- 13.6 DMD may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report; allow the CRB to create or maintain a credit information file about the Client including credit history.
- 13.7 The information given to the CRB may include:
- (a) personal information as outlined in 13.1 above;
- (b) name of the credit provider and that DMD 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 DMD has been paid or otherwise discharged and all details surrounding that discharge (e.g., dates of payments);
- (g) information that, in the opinion of DMD, 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).
- 13.8 The Client shall have the right to request (by e-mail) from DMD:
- (a) a copy of the information about the Client retained by DMD and the right to request that DMD correct any incorrect information; and
- (b) that DMD does not disclose any personal information about the Client for the purpose of direct marketing.
- 13.9 DMD 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 fulfill the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 13.10 The Client can make a privacy complaint by contacting DMD via e-mail. DMD 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.
- 14. Confidentiality / Intellectual Property**
- 14.1 Both the Client and DMD agrees to treat all information and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.
- 14.2 Exceptions to clause 14.1 will be disclosures to legal advisers, disclosures required by law, and disclosures necessary for the proper performance of the Services.
- 14.3 Where DMD has designed, drawn, written plans or a schedule of Services, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in DMD, and shall only be used by the Client at DMD's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of DMD.
- 14.4 The Client warrants that all designs, specifications or instructions given to DMD will not cause DMD to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify DMD against any action taken by a third party against DMD in respect of any such infringement.
- 14.5 The Client agrees that DMD may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which DMD has created for the Client.
- 15. Trusts**
- 15.1 If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not DMD may have notice of the Trust, the Client covenants with DMD 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 DMD (DMD 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.
- 16. Change In Control**
- 16.1 The Client shall give the supplier 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, change of trustees, or business practice). The Client shall be liable for any loss incurred by the supplier as a result of the Client's failure to comply with this clause.
- 17. Service of Notices**
- 17.1 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.
- (f) 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.
- 18. Unpaid Sellers Rights**
- 18.1 Where the Client has left any item with DMD for repair, modification, exchange or for DMD to perform any other Service in relation to the item and DMD has not received or been tendered the whole of any monies owing to it by the Client, DMD shall have, until all monies owing to DMD are paid;
- (a) A lien on the item; and
- (b) The right to retain and sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale and disposal of uncollected goods.
- 18.2 The lien of DMD shall continue despite the commencement of proceedings, judgement for any monies owing to DMD having been obtained against the Client.
- 19. Errors and Omissions**
- 19.1 The Client acknowledges and accepts that DMD 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 DMD 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 DMD in respect of the Services.
- 19.2 In the event such an error and/or omission occurs in accordance with clause 19.1, and is not attributable to the negligence and/or willful misconduct of DMD; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 20. Compliance with Laws**
- 20.1 The Client and DMD 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.
- 20.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 20.3 The Client agrees that the site will comply with any works health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 21.0 Electronic Payments Act**
- 21.1 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 (NSW), the Electronic Communications Act 2000 (SA), the Electronic Transactions Act 2001 (ACT), the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (TAS), Section 10 of the Electronic Transactions Act 2001 (VIC), (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 22. Dispute Resolution**
- 22.1 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.
- 23. Force Majeure**
- 23.1 Neither DMD or the Client shall be liable for any default on a Project due to any force majeure act, event or cause other than lack of funds which is beyond the reasonable control of that party, including:
- (a) Act of God, peril of the sea, accident of navigation, war, sabotage, riot, insurrection, civil commotion, national emergency (whether in fact or law), martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of the party concerned), epidemic, quarantine, radiation or radioactive contamination;
- (b) Action or inaction of any government or governmental or other competent authority (including any court of competent jurisdiction), including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order; and
- (c) Breakdown of plant, machinery or equipment or shortages of labour, transportation, fuel, power or plant, machinery, equipment or material.
- 24. General**
- 24.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia, the state in which DMD has its principal place of business and are subject to the jurisdiction of the courts in Perth.
- 24.3 Subject to clause 8, DMD 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 DMD of these terms and conditions (alternatively DMD's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 24.4 DMD may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 24.5 The Client cannot licence or assign without the written approval of DMD.
- 24.6 DMD 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 DMD's subcontractors without the authority of DMD.
- 24.7 The Client agrees that DMD 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 DMD to provide Goods to the Client.
- 24.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lockout, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 24.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.