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## Weldone Solutions 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 "Weldone" means Weldone Solutions Pty Ltd ATF McNamara Family Trust T/A Weldone Solutions Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Weldone Solutions Pty Ltd ATF McNamara Family Trust T/A Weldone Solutions 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 Weldone 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 Weldone to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "**Personal Information**" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.7 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Weldone and the Client in accordance with clause 5 below.
- 1.8 "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.
- 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 on credit shall not take effect until the Client has completed a credit application with Weldone and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, Weldone 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 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 Weldone 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 Weldone 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 Weldone 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 Weldone; 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 Weldone 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 Weldone as a result of the Client's failure to comply with this clause.

### 5. Price and Payment

- 5.1 At Weldone's sole discretion, the Price shall be Weldone'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 sixty (60) days.
- 5.2 Weldone reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations or changes to accessing the site or site conditions, availability of machinery, safety considerations, prerequisite work by a third party not being completed, change of design, hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Services;
- or

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## Weldone Solutions Pty Ltd – Terms & Conditions of Trade

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- (d) in the event of increases to Weldone in the cost of labour or materials (including but not limited to fluctuations in metal prices, overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond Weldone's control.
- 5.3 At Weldone's sole discretion, a non-refundable deposit may be required.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Weldone, which may be:
- (a) on Delivery of the Goods;
  - (b) by way of instalments/progress payments in accordance with Weldone's payment schedule;
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by Weldone.
- 5.5 Payment may be made by cash, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and Weldone.
- 5.6 Weldone may in its discretion allocate any payment received from the Client towards any invoice that Weldone determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Weldone may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Weldone, payment will be deemed to be allocated in such manner as preserves the maximum value of Weldone's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Weldone nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Weldone an amount equal to any GST Weldone must pay for any supply by Weldone under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 6. Delivery

- 6.1 Subject to clause 6.2 it is Weldone's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.2 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Weldone claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Weldone's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
  - (b) have the site ready for the Services; or
  - (c) notify Weldone that the site is ready.
- 6.3 At Weldone's sole discretion the cost of delivery is included in the Price.
- 6.4 Weldone may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Any time specified by Weldone for delivery of the Goods is an estimate only and Weldone will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that Weldone is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then Weldone shall be entitled to charge a reasonable fee for redelivery and/or storage

### 7. Risk

- 7.1 If Weldone retains ownership of the Goods under clause 13 then:
- (a) where Weldone is supplying Goods only, all risk for the Goods shall immediately pass to the Client on delivery and the Client must insure the Goods on or before delivery. Delivery of the Goods 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 Goods at Weldone's address; or
    - (ii) the Goods are delivered by Weldone or Weldone's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
  - (b) where Weldone is to both supply and install Goods then Weldone shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Client.
- 7.2 Notwithstanding the provisions of clause 7.1 if the Client specifically requests Weldone to leave Goods outside Weldone's premises for collection or to deliver the Goods to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Client's expense.
- 7.3 Weldone 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, Weldone accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 7.4 Where the Client is to supply Weldone with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. Weldone shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Client.
- 7.5 The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, or dangerous access to installation sites) that Weldone, or employees of Weldone, reasonably form the opinion that the Client's premises is not safe for the installation of Goods to proceed then Weldone shall be entitled to delay installation of the Goods (in accordance with the provisions of clause 6.2 above) until Weldone is satisfied that it is safe for the installation to proceed.
- 7.6 The Client acknowledges that where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims used due to the difference in aluminium alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Goods.

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## Weldone Solutions Pty Ltd – Terms & Conditions of Trade

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- 7.7 The Client acknowledges that Goods supplied may exhibit variations in shade tone, colour, texture, surface and finish, and may fade or change colour over time. Weldone will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 7.8 The Client acknowledges that Goods supplied may:
- (a) exhibit variations in shade tone, colour, texture, surface and finish, and may fade or change colour over time. Weldone will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and
  - (b) fade or change colour over time; and
  - (c) expand, contract or distort as a result of exposure to heat, cold, weather; and
  - (d) mark or stain if exposed to certain substances; and
  - (e) be damaged or disfigured by impact or scratching.
- 8. Fencing Risk**
- 8.1 The Client must be on site to supervise the marking out of the fence line, placement of boundary pegs and during the installation of the fence. If the Client fails to comply with this clause, then Weldone accepts no responsibility for installation decisions that need to be made by Weldone in the Client's absence.
- 8.2 The Client acknowledges that it is their responsibility to remove any existing fence (including existing footings), trees, vines and shrubs to allow Weldone clear access along the proposed fence line prior to commencement of work by Weldone unless otherwise agreed in writing between Weldone and the Client. Under no circumstances will Weldone handle removal of asbestos product.
- 8.3 The Client shall provide Weldone with a suitable free power source.
- 8.4 Whilst Weldone will take all due care during installation Weldone will not accept any responsibility for tiles or pavers damaged during installation.
- 8.5 Where fencing is installed on a retaining wall Weldone shall not be liable for any movement in the fence due to consolidation, or the movement of soil or any other component of the retaining wall.
- 8.6 Weldone shall not be responsible for digging land out under fence lines nor removal of soil from the work site.
- 8.7 Weldone reserves the right to touch-up all products supplied and installed on the work site to rectify minor blemishes or damage to paintwork.
- 9. Dimensions, Plans and Specifications**
- 9.1 All customary industry tolerances shall apply to the dimensions and measurements of the Goods, unless Weldone and the Client agree otherwise in writing
- 10. Specifications**
- 10.1 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in Weldone's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by Weldone.
- 11. Other Tradesmen**
- 11.1 Weldone shall not be liable for any claim for losses, damages or costs arising from defective work or materials provided by other tradesmen. It shall be the Client's responsibility to ensure the work of other tradesmen installing the Goods provided by Weldone or other interactive and/or supportive components as per the manufacturer's instructions or recommendations.
- 12. Access**
- 12.1 The Client shall ensure that Weldone has clear and free access to the work site at all times to enable them to deliver and/or install the Goods. Weldone 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 Weldone.
- 13. Compliance with Laws**
- 13.1 The Client and Weldone shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 13.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 13.3 The Client 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.
- 14. Title**
- 14.1 Weldone and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Weldone all amounts owing to Weldone; and
  - (b) the Client has met all of its other obligations to Weldone.
- 14.2 Receipt by Weldone 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.
- 14.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 14.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to Weldone on request;
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Weldone and must pay to Weldone the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;

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## Weldone Solutions Pty Ltd – Terms & Conditions of Trade

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- (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 Weldone and must pay or deliver the proceeds to Weldone 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 Weldone and must sell, dispose of or return the resulting product to Weldone as it so directs;
- (e) the Client irrevocably authorises Weldone to enter any premises where Weldone believes the Goods are kept and recover possession of the Goods;
- (f) Weldone 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 Weldone;
- (h) Weldone may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

### 15. Personal Property Securities Act 2009 (“PPSA”)

- 15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 15.2 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 Weldone for Services – that have previously been supplied and that will be supplied in the future by Weldone to the Client.
- 15.3 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 Weldone 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 15.3(a)(i) or 15.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, Weldone for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of Weldone;
  - (d) 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 Weldone;
  - (e) immediately advise Weldone 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.
- 15.4 Weldone 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.
- 15.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by Weldone, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Client must unconditionally ratify any actions taken by Weldone under clauses 15.3 to 15.5.
- 15.9 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 16. Security and Charge

- 16.1 In consideration of Weldone agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Client indemnifies Weldone from and against all Weldone’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Weldone’s rights under this clause.
- 16.3 The Client irrevocably appoints Weldone and each director of Weldone as the Client’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client’s behalf.

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

- 17.1 The Client must inspect the Goods on Delivery and must within seven (7) days of Delivery notify Weldone in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Weldone to inspect the Goods.
- 17.2 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**).
- 17.3 Weldone acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Weldone makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Weldone’s liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.5 If the Client is a consumer within the meaning of the CCA, Weldone’s liability is limited to the extent permitted by section 64A of Schedule 2.

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## Weldone Solutions Pty Ltd – Terms & Conditions of Trade

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- 17.6 If Weldone is required to replace the Goods under this clause or the CCA, but is unable to do so, Weldone may refund any money the Client has paid for the Goods.
- 17.7 If the Client is not a consumer within the meaning of the CCA, Weldone'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 Weldone at Weldone's sole discretion;
  - (b) limited to any warranty to which Weldone is entitled, if Weldone did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 17.8 Subject to this clause 17, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 17.1; and
  - (b) Weldone 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.
- 17.9 Notwithstanding clauses 17.1 to 17.8 but subject to the CCA, Weldone shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;
  - (b) the Client using the Goods for any purpose other than that for which they were designed;
  - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Client failing to follow any instructions or guidelines provided by Weldone;
  - (e) fair wear and tear, any accident, or act of God.
- 17.10 In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to Delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Weldone as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that Weldone has agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 17.10.
- 17.11 Weldone may in its absolute discretion accept non-defective Goods for return in which case Weldone may require the Client to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.
- 17.12 Notwithstanding anything contained in this clause if Weldone is required by a law to accept a return then Weldone will only accept a return on the conditions imposed by that law.
- 17.13 Subject to clause 17.1, customised, or non-stocklist items or Goods made or ordered to the Client's specifications are not acceptable for credit or return.

### 18. Intellectual Property

- 18.1 Where Weldone has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Weldone. Under no circumstances may such designs, drawings and documents be used without the express written approval of Weldone.
- 18.2 The Client warrants that all designs, specifications or instructions given to Weldone will not cause Weldone to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Weldone against any action taken by a third party against Weldone in respect of any such infringement.
- 18.3 The Client agrees that Weldone may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Weldone has created for the Client.

### 19. Default and Consequences of Default

- 19.1 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 Weldone's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes Weldone any money the Client shall indemnify Weldone from and against all costs and disbursements incurred by Weldone in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Weldone's contract default fee, and bank dishonour fees).
- 19.3 Further to any other rights or remedies Weldone may have under this Contract, if a Client has made payment to Weldone, 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 Weldone under this clause 19 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.
- 19.4 Without prejudice to Weldone's other remedies at law Weldone shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Weldone shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Weldone becomes overdue, or in Weldone'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 Weldone;
  - (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.

### 20. Cancellation

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

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## Weldone Solutions Pty Ltd – Terms & Conditions of Trade

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- 20.2 Weldone 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 Weldone shall repay to the Client any money paid by the Client for the Goods. Weldone shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Weldone as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 21. Privacy Policy

- 21.1 All emails, documents, images or other recorded information held or used by Weldone is Personal Information, as defined and referred to in clause 21.3, and therefore considered Confidential Information. Weldone 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"). Weldone acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by Weldone that may result in serious harm to the Client, Weldone 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.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to Weldone in respect of Cookies where transactions for purchases/orders transpire directly from Weldone's website. Weldone 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 Weldone when Weldone sends an email to the Client, so Weldone 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 Weldone's website.
- 21.3 The Client agrees for Weldone 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 Weldone.
- 21.4 The Client agrees that Weldone 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.
- 21.5 The Client consents to Weldone being given a consumer credit report to collect overdue payment on commercial credit.
- 21.6 The Client agrees that personal credit information provided may be used and retained by Weldone 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.
- 21.7 Weldone 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.
- 21.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 21.3 above;
  - (b) name of the credit provider and that Weldone 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 Weldone has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of Weldone, 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).
- 21.9 The Client shall have the right to request (by e-mail) from Weldone:
- (a) a copy of the Personal Information about the Client retained by Weldone and the right to request that Weldone correct any incorrect Personal Information; and
  - (b) that Weldone does not disclose any Personal Information about the Client for the purpose of direct marketing.

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## Weldone Solutions Pty Ltd – Terms & Conditions of Trade

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- 21.10 Weldone 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.
- 21.11 The Client can make a privacy complaint by contacting Weldone via e-mail. Weldone 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).
- 22. Unpaid Seller's Rights**
- 22.1 Where the Client has left any item with Weldone for repair, modification, exchange or for Weldone to perform any other service in relation to the item and Weldone has not received or been tendered the whole of any monies owing to it by the Client, Weldone shall have, until all monies owing to Weldone are paid:
- (a) a lien on the item; and
  - (b) 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 Weldone shall continue despite the commencement of proceedings, or judgment for any monies owing to Weldone having been obtained against the Client.
- 23. Dispute Resolution**
- 23.1 If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference, each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
  - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 24. Building and Construction Industry Security of Payment Act 2002**
- 24.1 At Weldone's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
- 24.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.
- 25. Service of Notices**
- 25.1 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.
- 25.2 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.
- 26. Trusts**
- 26.1 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 Weldone may have notice of the Trust, the Client covenants with Weldone 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 Weldone (Weldone 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.
- 27. General**
- 27.1 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.
- 27.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria in which Weldone has its principal place of business, and are subject to the jurisdiction of the courts of Victoria.
- 27.3 Subject to clause 17, Weldone 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 Weldone of these terms and conditions (alternatively Weldone's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 27.4 Weldone may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.

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**Weldone Solutions Pty Ltd – Terms & Conditions of Trade**

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- 27.5 The Client cannot licence or assign without the written approval of Weldone.
- 27.6 Weldone 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 Weldone's sub-contractors without the authority of Weldone.
- 27.7 The Client agrees that Weldone 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 Weldone to provide Goods to the Client.
- 27.8 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.
- 27.9 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.