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## Monaro Workwear & Promotional – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 “MW&P” means Richness Pty Limited T/A Monaro Workwear & Promotional, its successors and assigns or any person acting on behalf of and with the authority of Richness Pty Limited T/A Monaro Workwear & Promotional.
- 1.2 “Customer” means the person/s or any person acting on behalf of and with the authority of the Customer requesting MW&P to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - (b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.3 “Goods” means all Goods or Services supplied by MW&P to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable (plus any GST where applicable) for the Goods as agreed between MW&P and the Customer in accordance with clause 5 below.
- 1.5 “GST” means Goods and Services Tax (GST) as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

### 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer 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 Customer and MW&P.
- 2.3 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 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with MW&P 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 Customers credit limit and/or the account exceeds the payment terms, MW&P reserves the right to refuse delivery.
- 2.6 Once accepted by the Customer, MW&P’s written quotation shall be deemed to interpret correctly the Customer’s instructions, whether written or verbal. Where verbal instructions only are received from the Customer, MW&P shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.
- 2.7 MW&P reserves the right not to supply any Goods, or refuse the acceptance of any instructions, at any time for any reason (including where such, in MW&P’s opinion is or may be unlawful, offensive, contain prohibited content, or is otherwise inappropriate), and MW&P shall not be liable to the Customer for any such action.

### 3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that MW&P 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 MW&P 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 MW&P 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 MW&P; 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 MW&P not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, change in trustees, or business practice). The Customer shall be liable for any loss incurred by MW&P as a result of the Customer’s failure to comply with this clause.

### 5. Price and Payment

- 5.1 At MW&P’s sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by MW&P to the Customer; or
  - (b) MW&P’s quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 MW&P reserves the right to change the Price if a variation to MW&P’s quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods beyond MW&P’s control (including, but not limited to, any variation as a result of increases to MW&P in the cost of materials and labour) which will be detailed in writing, and shown as variations on MW&P’s invoice. The Customer shall be required to respond to any variation submitted by MW&P within ten (10) working days. Failure to do so will entitle MW&P to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.3 At MW&P’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 Customer on the date/s determined by MW&P, which may be:
- (a) on delivery of the Goods;
  - (b) before delivery of the Goods;
  - (c) by way of instalments/progress payments in accordance with MW&P’s payment schedule;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by MW&P.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and MW&P.

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- 5.6 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 MW&P nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to MW&P an amount equal to any GST MW&P must pay for any supply by MW&P under this or any other contract for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. Delivery of Goods**
- 6.1 Delivery (“**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 MW&P’s address; or
  - (b) MW&P (or MW&P’s nominated carrier) delivers the Goods to the Customer’s nominated address even if the Customer is not present at the address.
- 6.2 At MW&P’s sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 6.3 Any time specified by MW&P for delivery of the Goods is an estimate only. The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. MW&P will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. In the event that the Customer is unable to take delivery of the Goods as arranged then MW&P shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7. Risk**
- 7.1 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.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, MW&P is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by MW&P is sufficient evidence of MW&P’s rights to receive the insurance proceeds without the need for any person dealing with MW&P to make further enquiries.
- 7.3 If the Customer requests MW&P to leave Goods outside MW&P’s premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer’s sole risk.
- 7.4 The Customer acknowledges that it is their responsibility to ensure that the Goods which MW&P is to supply are of the correct type, size, standard, quality, colour and finish and are as specified in the specifications, drawings, design and plans upon which MW&P based the quotation on and therefore, the Customer agrees to indemnify MW&P against any costs incurred by MW&P in rectifying such errors if required.
- 7.5 In the event that the Customer provides MW&P with any information and/or measurements relating to the supply of the Goods, MW&P shall be entitled to rely on the accuracy of any such information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, MW&P accepts no responsibility for any loss, damages, or costs however resulting from the supply of inaccurate measurements or other information.
- 7.6 The Customer acknowledges that variations of colour and shade are inherent in fabric dye lots. While every effort will be taken by MW&P to match colour and shade of the Goods (including PMS colours), MW&P shall not be liable for any loss, damage or costs, howsoever arising resulting from any variation in colour and shading between batches of the Goods or sale samples and the final Goods supplied.
- 7.7 MW&P shall not be held liable for inks wearing off through general wear and tear.
- 8. Preparation Costs, Samples, Proof Reading and Production**
- 8.1 The Customer acknowledges and accepts that any artwork, pre-manufacturing costs and/or associated costs incurred in the initial stage shall be the at the Customer’s expense and in some instances, the full amount of the cost may not be known until the final design of the Goods is sighted.
- 8.2 Unless otherwise agreed, the Customer shall bear the cost of fonts, or colour proofs, or artwork, specially bought at its request for the Goods.
- 8.3 When style, type or layout is left to MW&P’s judgement and then the Customer makes further alterations to the copy this will be invoiced as an extra.
- 8.4 When quotations are based on specifications, roughs, layouts, samples or dummies or printed, any extra work or cost caused by any variation by the Customer of the original instructions or by the Customer’s requirements being different from those originally submitted or described, then the cost of such variations may be charged to the Customer and shown as extras on the invoice.
- 8.5 All work carried out whether experimentally or otherwise at the Customer’s request will be charged to the Customer.
- 8.6 MW&P is under no obligation to provide samples of the Goods ordered other than by virtual (computerised) sample. Whilst every effort will be taken by MW&P to match virtual colours with physical colours, MW&P will take no responsibility for any variation between virtual samples and the supplied Goods. Should a physical sample be required, this will be provided on request by the Customer and will be charged for as an extra in accordance with clause 5.2.
- 8.7 Whilst every care is taken by MW&P to carry out the instructions of the Customer, it is the Customer’s responsibility to undertake a final proof reading of the Goods, which will be sent to the Customer and will be deemed accepted if no response is received by the Customer within forty-eight (48) hours of MW&P’s submission thereof. MW&P shall be under no liability whatsoever for any errors not corrected by the Customer in the final proof reading, and should the Customer’s alterations requires additional proofs this shall be invoiced as an extra in accordance with clause 5.2.
- 8.8 It shall be the Customer’s responsibility to inspect any sample supplied to ensure that the sample:
- (a) does not contain any latent or patent defect;
  - (b) is properly and professionally finished in accordance with industry best practice; and
  - (c) is reasonably fit for the use required by the Customer.
- 8.9 The Customer accepts that any delays in the approval of proofs and/or samples may impact on the delivery date.

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### 9. Customer's Property and Materials Supplied by the Customer

- 9.1 Where materials or equipment are supplied by the Customer for the provision of Services MW&P shall accept no liability for imperfect work caused by defects in, or the unsuitability of, such materials or equipment for the Services.
- 9.2 Disks, artwork and USB's supplied by the Customer and/or other authorised persons remain the property of the Customer. Unless otherwise indicated in writing MW&P shall assume these disks, artwork and USB's to be duplicate copies of the original.
- 9.3 In the case of property and materials left with MW&P without specific instructions, MW&P shall be free to dispose of them at the end of twelve (12) months after the completion of the Services and to accept and retain any proceeds gained from such disposal to cover MW&P's costs in holding and handling such items.
- 9.4 Any change or correction to any artwork and/or any printing surface supplied by the Customer which is deemed necessary by MW&P to ensure correctly finished work shall be invoiced as an extra.

### 10. Title

- 10.1 MW&P and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid MW&P all amounts owing to MW&P; and
  - (b) the Customer has met all of its other obligations to MW&P.
- 10.2 Receipt by MW&P 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 Customer in accordance with clause 10.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to MW&P on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for MW&P and must pay to MW&P 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 MW&P and must pay or deliver the proceeds to MW&P 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 MW&P and must sell, dispose of or return the resulting product to MW&P as it so directs.
  - (e) the Customer irrevocably authorises MW&P to enter any premises where MW&P believes the Goods are kept and recover possession of the Goods.
  - (f) MW&P may recover possession of any Goods in transit whether or not delivery has occurred.
  - (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 MW&P.
  - (h) MW&P may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

### 11. Personal Property Securities Act 2009 ("PPSA")

- 11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2 Upon assenting to these terms and conditions in writing the Customer 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 Customer to MW&P for Services – that have previously been supplied and that will be supplied in the future by MW&P to the Customer.
- 11.3 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 MW&P 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 11.3(a)(i) or 11.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, MW&P 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 MW&P;
  - (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 MW&P;
  - (e) immediately advise MW&P 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.
- 11.4 MW&P and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 11.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by MW&P, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Customer must unconditionally ratify any actions taken by MW&P under clauses 11.3 to 11.5.
- 11.9 Subject to any express provisions to the contrary (including those contained in this clause 11) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

**12. Security and Charge**

- 12.1 In consideration of MW&P 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 these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Customer indemnifies MW&P from and against all MW&P's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising MW&P's rights under this clause.
- 12.3 The Customer irrevocably appoints MW&P and each director of MW&P as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf.

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

- 13.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify MW&P 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 MW&P to inspect the Goods.
- 13.2 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**).
- 13.3 MW&P acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, MW&P makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. MW&P's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5 If the Customer is a consumer within the meaning of the CCA, MW&P's liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6 If MW&P is required to replace the Goods under this clause or the CCA, but is unable to do so, MW&P may refund any money the Customer has paid for the Goods.
- 13.7 If the Customer is not a consumer within the meaning of the CCA, MW&P'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 Customer by MW&P at MW&P's sole discretion;
  - (b) limited to any warranty to which MW&P is entitled, if MW&P did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 13.8 Subject to this clause 13, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 13.1; and
  - (b) MW&P 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 in which they were delivered as is possible.
- 13.9 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, MW&P 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 MW&P;
  - (e) fair wear and tear, any accident, or act of God.
- 13.10 MW&P may in its absolute discretion accept non-defective Goods for return in which case MW&P 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.
- 13.11 Notwithstanding anything contained in this clause if MW&P is required by a law to accept a return then MW&P will only accept a return on the conditions imposed by that law.

**14. Intellectual Property**

- 14.1 Where MW&P has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of MW&P, and shall only be used by the Customer at MW&P's discretion and for the original purpose specified by the Customer prior to the commencement of the Services. Any reproduction, reprinting or alterations are to be directed via MW&P for authorisation before proceeding. The assignment of copyright is to be negotiated directly with MW&P before any external alteration or reproduction is commenced.
- 14.2 Any design, copywriting, drawing, idea or code created for the Customer by MW&P or MW&P's agent is licensed for use by the Customer on a one-time only basis and may not be modified, re-used, or re-distributed in any way without the express written consent of MW&P.
- 14.3 Whilst every effort shall be made by MW&P to ensure that no rights or trademarks are infringed as a result of the Services provided by MW&P, the Customer agrees to indemnify MW&P against any claims by third parties for patent, trademark, design or copyright infringement, directly or indirectly arising out of the design, workmanship, material, construction, or use of the Goods or any other deficiency therein.
- 14.4 Where the Customer has supplied drawings, sketches, files or logo's to MW&P, the Customer warrants that the drawings, sketches, files or logo's do not breach any patent, trademark, design or copyright, and the Customer agrees to indemnify MW&P against any action taken by a third party against MW&P in respect of any such infringement.
- 14.5 The Customer agrees that MW&P may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which MW&P has created for the Customer.

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### 15. Default and Consequences of Default

- 15.1 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 MW&P's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Customer owes MW&P any money the Customer shall indemnify MW&P from and against all costs and disbursements incurred by MW&P in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, MW&P's contract default fee, and bank dishonour fees).
- 15.3 Further to any other rights or remedies MW&P may have under this contract, if a Customer has made payment to MW&P, 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 MW&P under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.
- 15.4 Without prejudice to MW&P's other remedies at law MW&P shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to MW&P shall, whether or not due for payment, become immediately payable if:
- any money payable to MW&P becomes overdue, or in MW&P's opinion the Customer will be unable to make a payment when it falls due;
  - the Customer has exceeded any applicable credit limit provided by MW&P;
  - 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
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### 16. Dispute Resolution

- 16.1 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:
- referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
  - conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

### 17. Cancellation

- 17.1 Without prejudice to any other remedies MW&P may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions MW&P may suspend or terminate the supply of Goods to the Customer. MW&P will not be liable to the Customer for any loss or damage the Customer suffers because MW&P has exercised its rights under this clause.
- 17.2 MW&P 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 Customer. On giving such notice MW&P shall repay to the Customer any money paid by the Customer for the Goods. MW&P shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by MW&P as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 17.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 18. Privacy Act 1988

- 18.1 The Customer agrees for MW&P 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 Customer in relation to credit provided by MW&P.
- 18.2 The Customer agrees that MW&P may exchange information about the Customer with those credit providers and with related body corporates 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 including the Customer's repayment history in the preceding two (2) years.
- 18.3 The Customer consents to MW&P being given a consumer credit report to collect overdue payment on commercial credit.
- 18.4 The Customer agrees that personal credit information provided may be used and retained by MW&P for the following purposes (and for other agreed purposes or required by):
- the provision of Goods; and/or
  - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - enabling the collection of amounts outstanding in relation to the Goods.
- 18.5 MW&P may give information about the Customer to a CRB for the following purposes:
- to obtain a consumer credit report;
  - allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 18.6 The information given to the CRB may include:
- personal information as outlined in 18.1 above;
  - name of the credit provider and that MW&P is a current credit provider to the Customer;
  - whether the credit provider is a licensee;
  - type of consumer credit;

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- (e) details concerning the Customer'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 Customer no longer has any overdue accounts and MW&P has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of MW&P, the Customer has committed a serious credit infringement;
  - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.7 The Customer shall have the right to request (by e-mail) from MW&P:
- (a) a copy of the information about the Customer retained by MW&P and the right to request that MW&P correct any incorrect information; and
  - (b) that MW&P does not disclose any personal information about the Customer for the purpose of direct marketing.
- 18.8 MW&P will destroy personal information upon the Customer'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.
- 18.9 The Customer can make a privacy complaint by contacting MW&P via e-mail. MW&P 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 Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 19. Unpaid Seller's Rights**
- 19.1 Where the Customer has left any item with MW&P for repair, modification, exchange or for MW&P to perform any other service in relation to the item and MW&P has not received or been tendered the whole of any monies owing to it by the Customer, MW&P shall have, until all monies owing to MW&P 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.
- 19.2 The lien of MW&P shall continue despite the commencement of proceedings, or judgment for any monies owing to MW&P having been obtained against the Customer.
- 20. Trusts**
- 20.1 If the Customer 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 MW&P may have notice of the Trust, the Customer covenants with MW&P as follows:
- (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
  - (b) the Customer 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 Customer against the Trust or the trust fund. The Customer 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 Customer will not without consent in writing of MW&P (MW&P will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
    - (i) the removal, replacement or retirement of the Customer 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.
- 21. General**
- 21.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Australian Capital Territory in which MW&P has its principal place of business, and are subject to the jurisdiction of the Courts in Canberra, Australian Capital Territory.
- 21.3 Subject to clause 13 MW&P 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 MW&P of these terms and conditions (alternatively MW&P's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 21.4 MW&P may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 21.5 The Customer cannot licence or assign without the written approval of MW&P.
- 21.6 MW&P 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 Customer agrees and understands that they have no authority to give any instruction to any of MW&P's sub-contractors without the authority of MW&P.
- 21.7 The Customer agrees that MW&P may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for MW&P to provide Goods to the Customer.
- 21.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 21.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.