

1. DEFINITIONS

- 1.1 "ME" means Marco Engineering Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Marco Engineering Pty Ltd.
- 1.2 "Customer" means the person/s purchasing the Services, as specified in any quotation, invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Services" means all services provided by ME to the Customer at the Customer's request from time to time, including any goods, documents, designs, drawings or materials ("Goods") supplied, consumed, created or deposited incidentally by ME in the course of it conducting, or providing to the Customer, any Services. 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 Works as agreed between ME and the Customer in accordance with clause 4 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 provision of, any Services/products.
- 2.2 These terms and conditions may only be amended with both parties consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and ME, including any conflicting terms which shall be set aside and negotiated between the Customer and ME separately to this contract.
- 2.3 Dimensions and specifications contained or referred to in this contract or any other agreement or in any publications maintained or issued by ME are estimates only. Unless otherwise expressly agreed in writing by ME, it is not a condition of this contract or any other agreement that Goods will correspond precisely with such dimensions and specifications, and customary or reasonable tolerances will be allowed.
- 2.4 Neither ME, nor any of its employees or agents, warrant or guarantee the accuracy or completeness of any information provided to the Customer. The Customer undertakes that all matters relevant to the provision of the Services hereunder are to the Customer's satisfaction, and in doing so, the Customer acknowledges that in deciding to purchase the Services/products hereunder that:
 - (a) they have relied on their own skill, inspection and judgement;
 - (b) they have not relied on any statement made by ME or its employees or agents;
 - (c) they assume the risk of mistake in relation to the information provided.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.6 These terms and conditions may be meant to be read in conjunction with ME's Hire Form, and:
 - (a) where the context so permits, the terms 'Goods' or 'Services' shall include any supply of Equipment, as defined therein; and
 - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

3. CHANGE IN CONTROL

- 3.1 The Customer shall give ME 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, or business practice). The Customer shall be liable for any loss incurred by ME as a result of the Customer's failure to comply with this clause.

4. PRICE AND PAYMENT

- 4.1 At ME's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by ME to the Customer for Services provided; or
 - (b) ME's quoted Price (subject to clause 4.2) which is based upon rates and costs at the date of the quotation, and will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 ME reserves the right to change the Price:
 - (a) if a variation to the Services which are to be provided (including any applicable design, plans or specifications) is requested; or
 - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the nominated address, safety considerations, prerequisite work by any third party not being completed or inaccurate structural measurements provided by the Customer, etc.) which are only discovered on commencement of the Services; or
 - (c) in the event of increases to ME in the costs of supply and/or production of Goods (including fluctuations in currency exchange rates and steel prices, etc.), and/or delivery, due to circumstances beyond the reasonable control of ME.
- 4.3 Variations will be charged for on the basis of ME's quotation, and will be detailed in writing, and shown as variations on ME's invoice. The Customer shall be required to respond to any variation submitted by ME within ten (10) working days. Failure to do so will entitle ME 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.
- 4.4 At ME's sole discretion, a non-refundable deposit may be required.
- 4.5 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by ME, which may be:
 - (a) on completion of the Services; or
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice furnished to the Customer to ME.
- 4.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of may apply per transaction), or by any other method as agreed to between the Customer and ME.
- 4.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to ME an amount equal to any GST ME must pay for any provision of Services by ME under this contract, or any other agreement. 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.
- 4.8 Receipt by ME 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, and until then ME's rights and ownership in respect of the Services, and this contract, shall continue.

5. PROVISION OF THE SERVICES

- 5.1 Delivery of the Goods is taken to occur at the time that:
 - (a) the Customer (or its nominated carrier) takes possession of the Goods at ME's premises; or
 - (b) ME (or its nominated carrier) delivers the Goods to the Customer's nominated address, even if the Customer is not present thereat.
- 5.2 At ME's sole discretion, the cost of delivery is either included in, or in addition to, the Price.
- 5.3 ME 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.
- 5.4 Any time specified by ME for provision of the Services is an estimate only, and ME will not be liable for any loss or damage incurred by the Customer as a result of any delay. However, both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that ME is unable to provide the Services as agreed solely due to any action or inaction of the Customer (including, but not limited to, any failure by the Customer to make a selection or provide adequate instructions, have the address ready for the Services or notify ME that the address is ready, etc.), then ME shall be entitled to charge reasonable fees for re-providing the Services at a later time and date and/or storage of any Goods.

6. RISK

- 6.1 Risk of damage to or loss of the Goods passes to the Customer on delivery thereof, and the Customer must insure the Goods on, or before, delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery, but prior to ownership passing to the Customer, ME is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by ME is sufficient evidence of ME's rights to receive the insurance proceeds without the need for any person dealing with ME to make further enquiries.

- 6.3 If the Customer requests ME to leave Goods outside ME's premises for collection, or to deliver the Goods to an unattended address, then such Goods shall be left at the Customer's sole risk.
- 6.4 The Customer acknowledges that Goods provided may exhibit variations in shade, colour, texture, surface and finish. ME will make every effort to match batches of product in order to minimise such variations, but shall not be liable in any way whatsoever where such variations occur.
- 6.5 The Customer warrants that the structure of the building/s or equipment in or upon which Goods are to be installed or erected is sound and will sustain the installation and Services incidental thereto, and ME shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the building/s or equipment be unable to accommodate the installation.
- 6.6 Unless ME has installed the Goods, ME shall not be liable for any defect or damage resulting from any incorrect or faulty installation by the Customer or any third party.
- 6.7 The Customer acknowledges that ME is only responsible for parts that are replaced/provided by ME and does not at any stage accept any liability in respect of components supplied by any other third party that subsequently fail and are found to be the source of the failure, the Customer agrees to indemnify ME against any loss or damage thereto, or caused thereby, or any part thereof howsoever arising.
- 6.8 Where the Customer has supplied materials for ME to complete the Services, the Customer acknowledges that it accepts responsibility for the suitability of purpose, quality and any faults inherent in those materials. ME shall not be responsible for any defects in the Services, any loss or damage howsoever arising from the use of materials supplied by the Customer.
- 6.9 Any advice, recommendation, information, assistance or service provided by ME in relation to Services provided is given in good faith, is based on ME's own knowledge and experience and shall be accepted without liability on the part of ME and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Services.

7. ACCURACY OF CUSTOMER'S PLANS AND MEASUREMENTS

- 7.1 In the event the Customer gives information relating to the provision of Services (including plans, specifications, measurements, quantities and other information provided by the Customer):
 - (a) it is the Customer's responsibility to verify the accuracy of the information before the Customer or ME places an order based on the information. ME accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause;
 - (b) ME shall be entitled to rely on the accuracy of such information. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, ME accepts no responsibility for any loss, damages, or costs however resulting therefrom.

8. DIMENSIONS, PLANS AND SPECIFICATIONS

- 8.1 All industry tolerances shall apply to the dimensions and measurements of Goods, unless ME and the Customer agree otherwise in writing.

9. COMPLIANCE AND CONSENTS

- 9.1 The Customer and ME 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, including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 9.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.

10. TITLE

- 10.1 ME and the Customer agree that the Customer's obligations to ME for the provision the Services shall not cease (and ownership of the Goods shall not pass) until:
 - (a) the Customer has paid ME all amounts owing to ME under this contract; and
 - (b) the Customer has met all other obligations due by the Customer to ME in respect of all contracts between ME and the Customer.
- 10.2 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, unless the Goods have become fixtures, must return the Goods to ME on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for ME and must pay to ME 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 ME and must pay or deliver the proceeds to ME 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 ME and must sell, dispose of or return the resulting product to ME as it so directs.
 - (e) unless the Goods have become fixtures, the Customer irrevocably authorises ME to enter any premises where ME believes the Goods are kept and recover possession of the Goods.
 - (f) ME 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 ME.
 - (h) ME may commence proceedings to recover the Price 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 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:
 - (a) all Goods previously provided, and to be provided in the future, by ME to the Customer;
 - (b) all the Customer's present and after acquired property being a charge, including anything in respect of which the Customer has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Customer to ME for Services – that have previously been provided and that will be provided in the future by ME 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 ME 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 11.2(a)(i) or 11.2(a)(ii);
 - (b) indemnify, and upon demand reimburse, ME 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 registration made thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of ME;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Services in favour of a third party without the prior written consent of ME;
 - (e) immediately advise ME 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 ME 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 ME, 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 ME under clauses 11.2 to 11.5.
- 11.9 Subject to any express provisions to the contrary 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 ME agreeing to provide Services, 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 ME from and against all ME's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising ME's rights under this clause.
- 12.3 The Customer irrevocably appoints ME (and each director of ME) 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 Services on completion and must within seven (7) hours of such time notify ME in writing of any evident defect/damage, error or omission (including ME's workmanship), shortage in quantity, or failure to comply with the description or quotation. The Customer must notify any other alleged defect in the Services as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow ME to inspect/review the Services.
- 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 ME 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, ME makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Services. ME'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 meaning of the CCA, ME's liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6 If ME is required to rectify, re-provide, or pay the cost of re-providing the Services under this clause or the CCA, but is unable to do so, then ME may refund any money the Customer has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Customer which were not defective.
- 13.7 If the Customer is not a consumer within meaning of the CCA, ME's liability for any defect or damage in the Services is:
- limited to the value of any express warranty, or warranty card, provided to the Customer by ME (at ME's sole discretion);
 - limited to any warranty to which ME is entitled, if ME did not manufacture the Goods;
 - otherwise negated absolutely.
- 13.8 Subject to this clause 13, returns will only be accepted provided that:
- the Customer has complied with the provisions of clause 13.1; and
 - ME has agreed that the Goods are defective; and
 - the Goods are returned within a reasonable time at the Customer'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.
- 13.9 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, ME shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- the Customer failing to provide proper maintenance, or properly secure and/or store any Goods;
 - the Customer using any Goods for any purpose other than that for which they were designed;
 - 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;
 - the Customer failing to follow any instructions or guidelines provided by ME;
 - fair wear and tear, any accident, or act of God.
- 13.10 In the case of second-hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the Goods prior to delivery, and accepts them with all faults, and that, to the extent permitted by law, no warranty is given by ME as to the quality or suitability for any purpose, and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that ME has agreed to provide the Customer with the Goods, and calculated the Price thereof, in reliance of this clause 13.10.
- 13.11 ME may (in its absolute discretion) accept non-defective Goods for return, in which case ME may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Goods, plus any freight costs.
- 13.12 Notwithstanding anything contained in this clause, if ME is required by a law to accept a return then ME will only accept a return on the conditions imposed by that law.

14. INTELLECTUAL PROPERTY

- 14.1 Where ME has designed, drawn or developed Goods for the Customer, then the copyright in any designs, specifications, drawings, other technical information and documents shall remain the property of ME unless agreed in writing.
- 14.2 The Customer warrants that all designs, specifications or instructions given to ME will not cause ME to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify ME against any action taken by a third party against ME in respect of any such infringement.
- 14.3 The Customer agrees that ME may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods (or digital media thereof) which ME has created for the Customer.

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 ME'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 ME any money the Customer shall indemnify ME from and against all costs and disbursements incurred by ME in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, ME's contract default fee, and bank dishonour fees).
- 15.3 Further to any other rights or remedies ME may have under this contract, if the Customer has made payment to ME by credit card, 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 ME 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 ME's other remedies at law ME shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to ME shall, whether or not due for payment, become immediately payable if:
- any money payable to ME becomes overdue, or in ME's opinion the Customer will be unable to make a payment when it falls due; or
 - the Customer has exceeded any applicable credit limit provided by ME; or
 - 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. CANCELLATION

- 16.1 Without prejudice to any other remedies ME may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions ME may suspend or terminate the provision of Services to the Customer. ME will not be liable to the Customer for any loss or damage the Customer suffers because ME has exercised its rights under this clause.
- 16.2 ME may cancel any contract to which these terms and conditions apply, or cancel provision of the Services at any time before the Services have commenced, by giving written notice to the Customer. On giving such notice ME shall repay to the Customer any money paid by the Customer for the Services. ME shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.3 In the event that the Customer cancels this contract, or provision of the Services, the Customer shall be liable for any and all loss incurred (whether direct or indirect) by ME as a direct result of the cancellation (including, but not limited to, any loss of profits).

- 16.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.

17. PRIVACY ACT 1988

- 17.1 The Customer agrees for ME 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 ME.
- 17.2 The Customer agrees that ME 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.
- 17.3 The Customer consents to ME being given a consumer credit report to collect overdue payment on commercial credit.
- 17.4 The Customer agrees that personal credit information provided may be used and retained by ME for the following purposes (and for other agreed purposes or required by):
- the provision of Services; and/or
 - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Services; 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 Services.
- 17.5 ME 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.
- 17.6 The information given to the CRB may include:
- personal information as outlined in 17.1 above;
 - name of the credit provider and that ME is a current credit provider to the Customer;
 - whether the credit provider is a licensee;
 - type of consumer credit;
 - 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);
 - 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 ME has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - information that, in the opinion of ME, the Customer has committed a serious credit infringement;
 - advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 17.7 The Customer shall have the right to request (by e-mail) from ME:
- a copy of the information about the Customer retained by ME and the right to request that ME correct any incorrect information; and
 - that ME does not disclose any personal information about the Customer for the purpose of direct marketing.
- 17.8 ME 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.
- 17.9 The Customer can make a privacy complaint by contacting ME via e-mail. ME 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.

18. UNPAID SELLER'S RIGHTS

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

19. SERVICE OF NOTICES

- 19.1 Any written notice given under this contract shall be deemed to have been given and received:
- by handing the notice to the other party, in person;
 - by leaving it at the address of the other party as stated in this contract;
 - by sending it by registered post to the address of the other party as stated in this contract;
 - 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;
 - if sent by email to the other party's last known email address.
- 19.2 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.

20. GENERAL

- 20.1 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.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the State in which ME has its principal place of business, and are subject to the jurisdiction of the Beemleigh Courts in that State.
- 20.3 Subject to clause 13, ME 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 ME of these terms and conditions (alternatively ME's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 20.4 The Customer shall not, without the prior written consent of ME, be entitled to set off against, or deduct from the Price (by way of counterclaim or other legal or equitable claim), any sums owed or claimed to be owed to the Customer by ME, nor to withhold payment of any invoice because part of that invoice is in dispute.
- 20.5 Neither party to this contract may assign this contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld). ME may elect to subcontract out any part of the Works 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 ME's sub-contractors without the authority of ME.
- 20.6 The Customer agrees that ME 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 ME to provide Works to the Customer.
- 20.7 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.
- 20.8 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.