

bluelab
DESIGN
LUMINAIRE CREATORS

Terms & Conditions of Trade

1. Definitions

- 1.1 "Bluelab means Blue lab design Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Blue lab design Pty Ltd.
- 1.2 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting Bluelab to provide Goods and 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" includes all present and after acquired Goods supplied to the Customer by Bluelab Design and all services supplied to the customer by Bluelab Design, pursuant to an order placed by the customer. (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Bluelab Design's Intellectual property" means all intellectual property owned by Bluelab Design, and includes without limitation:
- a) the Bluelab Design trade mark and any other trade mark used by Bluelab Design,
 - b) product drawings and renders by Bluelab
 - c) shop Drawings by Bluelab
 - d) lighting designs by Bluelab
- to sell or market any goods or services from time to time.
- 1.5 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Bluelab and the Customer in accordance with clause 6 below.
- 1.6 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.7 "Agreement" means the Terms of trading between Bluelab Design and the Customer which applies whenever Bluelab Design supplies Goods or Services to.

2. Contract

- 2.1 This contract supersedes any earlier terms or conditions whenever published or applying between Bluelab and the Customer, and will be deemed to override all oral and written agreements, negotiations by either party prior to, or at the time of, the making of this agreement. The Customer will be deemed to have accepted these Terms of Trading if the Customer places any order or otherwise deals with Bluelab after receiving notice of these Terms of Trading, or if the Customer makes payment of any invoices to which these Terms of Trading are attached. The Customer will be deemed to have accepted these Terms of Trading in the foregoing circumstances, despite any subsequent request by Bluelab for the Customer to sign a copy of the Terms of Trading or to otherwise acknowledge the Customer's acceptance of this Contract, and despite any omission or refusal of the Customer to do so.
- 2.2 Any oral representation, warranty or promise whatsoever (other than those contained herein) made by any employee or agent of Bluelab Design to the Customer does not form any part of this Contract.
- 2.3 To the extent of any inconsistency, any terms and conditions of the Customer included in documents submitted to Bluelab Design are expressly excluded and do not form part of this Contract Acceptance
- 2.4 These terms and conditions of sales apply to all sales of Goods by Bluelab to the exclusion of all others, including any terms and conditions of the proposed purchaser of the goods ("purchaser") whether on the purchaser's order form or otherwise.
- 2.5 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.
- 2.6 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 agreement between the Customer and Bluelab.
- 2.7 By placing an order for goods, paid the 50% non-refundable deposit or taking delivery of goods from Bluelab, the purchaser is deemed to have agreed to the immediately bound, jointly and severally, by these terms and conditions.
- 2.8 Bluelab has no obligation to refund the deposit if an order is cancelled.
- 2.9 Bluelab will not deliver any Goods to the Customer until the Goods are paid in full including any variances in pricing and additional charges incurred
- 2.10 Bluelab will not accept order cancellations from a customer, unless otherwise authorized by Bluelab Management in writing.
- 2.11 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Bluelab reserves the right to vary the Price with alternative Goods as per clause (relevant clause under Price and Payment). Bluelab also reserves the right to halt all Services until such time as Bluelab and the Customer agree to such changes. Bluelab shall not be liable to the Customer for any loss or damage the Customer suffers due to Bluelab exercising its rights under this clause.
- 2.12 Any changes to the Order whether it be quantity or variances to design will be subject to a price increase, unless otherwise accepted Bluelab in writing.
- 2.13 All literature, samples, specifications, submitted with this quotation is expressly illustrative and is by way of a general description of Goods only in accordance with industry standards. Any descriptions, dimensions or specifications contained in catalogues and other advertising material while being as accurate as possible but may not necessarily be identical with products and Services Bluelab is to supply. Bluelab will not accept liability to the Customer for quality of Goods which comply with accepted industry standards.

3. Electronic Transactions Act 2000

3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act. Errors & Omissions

4. Errors & Omissions

4.1 The Customer acknowledges and accepts that Bluelab 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 Bluelab in the formation and/or administration of this contract; and/or
- b) contained/omitted in/from any literature (hard copy and/or electronic) supplied by Bluelab in respect of the Services.

4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or willful misconduct of Bluelab; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

5. Change of Control

5.1 The Customer shall give Bluelab 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 Bluelab as a result of the Customer's failure to comply with this clause. Price and Payment

6. Price and Payment

6.1 At Bluelab's sole discretion, the Price shall be:

- a) as indicated on any invoice provided by Bluelab to the Customer;
- b) Bluelab's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

6.2 Bluelab reserves the right to change the price:

- a) if a variation to the Goods which are to be supplied is requested;
- b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested;
- c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, availability of machinery, prerequisite work by any third-party not being completed, change of design, etc) which are only discovered on commencement of the Services;
- d) in the event of increases to Bluelab in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges and/or additional package requests from the Customer) which are beyond Bluelab's control.

6.3 Variations will be charged for on the basis of Bluelab's quotation, and will be detailed in writing, and shown as variations on Bluelab's invoice. The Customer shall be required to respond to any variation submitted by Bluelab within ten (10) working days. Failure to do so will entitle Bluelab 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.

6.4 Bluelab Design requires a non-refundable deposit of 50% upon placement of the order, the balance to be paid prior to delivery. Variances to the deposit amount is left entirely to Bluelab's discretion and can only be accepted in writing.

6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Bluelab, which may be:

- a) by way of instalments/progress payments in accordance with Bluelab's payment schedule
- b) Balance of payment is due before the delivery of Goods to the customer;

6.6 Upon the Customer's failure to make payment in accordance with clause 6.5(b), of these terms and trading, Bluelab may charge interest on amounts not paid at a rate of 18% per annum calculated daily from 30 days after the completion of the Goods until the date of payment of the balance outstanding from time to time, such interest payable on demand. Bluelab also reserves the right to charge legal fees incurred and/or 15% fee +GST for any debt that has to be recovered via a debt collection agency.

6.7 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 Bluelab nor to withhold payment of any invoice because part of that invoice is in dispute.

6.8 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, Bluelab reserves the right to treat all retentions as placing the Customer's account into default.

6.9 If the customer notifies Bluelab that it requires Bluelab to store the goods for a period of time; or does not collect the Goods, accept delivery of the Goods or on the event where balances for the Goods are not paid inhibiting Bluelab from delivering the Goods under clause 2.9, then Bluelab may charge the Customer an amount which Bluelab considers to be reasonable in consideration for the company storage the relevant Goods until such time the Goods are collected by, or delivered to, the Customer (storage fee) and the Storage fee must be paid by the Customer to Bluelab prior to the Goods being released.

6.10 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Bluelab an amount equal to any GST Bluelab must pay for any supply by Bluelab under this or any other agreement for the sale of the Goods.

7. Delivery of Goods

7.1 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.

7.2 Delivery ("Delivery") of the Goods is taken to occur at the time that Bluelab (or Bluelab's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

7.3 Delivery of the Goods will occur only when the balance of payment including any price variations or charges as in clauses 2.9, 6.5 (b) and 6.5(c) is received by Bluelab as cleared funds.

7.3 At Bluelab's sole discretion, the cost of delivery is included in the Price (including but not limited to, all Goods ready for dispatch are packaged subject to Bluelab's standard practice, any additional packaging requested by the Customer, shall be invoiced as an extra in accordance with clause 6.2.

7.4 Subject to clause 7.5 it is Bluelab's responsibility to ensure that the Services start as soon as it is reasonably possible.

7.5 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Bluelab claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Bluelab's control, including but not limited to any failure by the Customer to:

- a) make a selection; or
- b) have the site ready for the Services; or
- c) notify Bluelab that the site is ready.
- d) not place or orders and/or deposit not paid in accordance with clause 2
- e) not pay the balance of Goods or charge variances that may occur
- f) design changes during manufacturing

7.6 Bluelab 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.

7.7 Any time specified by Bluelab for delivery of the Goods is an estimate only and Bluelab will not be liable for any loss or damage incurred by the Customer 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 Bluelab is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then Bluelab shall be entitled to charge a reasonable fee for redelivery and/or storage.

8. Risk

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

8.2 If the Customer requests Bluelab to leave Goods outside Bluelab'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.

8.3 In the event that the Customer provides Bluelab with any information and/or measurements relating to the supply of the Goods, Bluelab 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, Bluelab accepts no responsibility for any loss, damages, or costs however resulting from the supply of inaccurate measurements or other information.

8.4 The Customer acknowledges that it is their responsibility to ensure that all Goods, plant or equipment which Bluelab is to supply (or are to connect any of its Goods to) are of the correct type, size, rating, standard, quality, colour and finish, conform with all relevant Australian standards and local statutory requirements, and are as specified in the specifications, drawings and plans upon which Bluelab based the quotation on and therefore, the Customer agrees to indemnify Bluelab against any costs incurred by Bluelab in rectifying such errors if required.

9. Compliance

9.1 The Customer and Bluelab shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.

9.2 The Customer shall obtain (at the expense of the Customer) all licenses, permits, approvals etc. that may be required for the Services.

9.3 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring rules.

9.4 In the event that the Customer requires any additional testing to be carried out either on site or at Bluelab's premises or an agreed independent testing facility, all associated costs with such testing shall be borne by Customer. Bluelab agrees to advise the Customer by giving at least seven (7) days written notice prior to commencement of the testing.

10. Title

10.1 Bluelab and the Customer agree that ownership of the Goods shall not pass until:

- a) the Customer has paid Bluelab all amounts owing to Bluelab; and
- b) the Customer has met all of its other obligations to Bluelab.

10.2 Receipt by Bluelab 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 12.1: the Customer is only a bailee of the Goods and must return the Goods to Bluelab on request.

- a) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Bluelab and must pay to Bluelab the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- b) 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
- c) such act on trust for Bluelab and must pay or deliver the proceeds to Bluelab 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 Bluelab and must sell, dispose of or return the resulting product to Bluelab as it so directs.
- e) the Customer irrevocably authorises Bluelab to enter any premises where Bluelab believes the Goods are kept and recover possession of the Goods.
- f) Bluelab 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 Bluelab.
- h) Bluelab may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- i) Goods remain the sole and absolute property of Bluelab and no interest in the Goods (legal or equitable) passes to the Customer until such time as Bluelab has been paid by the Customer all monies due and owing to it by the Customer on any and all accounts whatsoever.

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 Bluelab for Services – that have previously been supplied and that will be supplied in the future by Bluelab 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 Bluelab 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 12.3(a)(i) or 12.3(a)(ii);
- b) indemnify, and upon demand reimburse, Bluelab 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 Bluelab;
- 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 Bluelab;
- e) immediately advise Bluelab 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 Bluelab 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 Bluelab, 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 Bluelab under clauses 12.3 to 12.5.

11.9 Subject to any express provisions to the contrary (including those contained in this clause 12) 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 Bluelab 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 Bluelab from and against all Bluelab's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Bluelab's rights under this clause.
- 12.3 The Customer irrevocably appoints Bluelab and each director of Bluelab 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 Bluelab 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 Bluelab 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 To the extent permitted by law, Bluelab Design does not provide any guarantee or warranty in relation to the Goods if outsourced. The Customer accepts the manufacturer's warranty (if any) in relation to the Goods. Bluelab will provide information to the Customer relating to the applicable manufacturer's warranty (if any).
- 13.4 Bluelab acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.5 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Bluelab makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Bluelab's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.6 If the Customer is a consumer within the meaning of the CCA, Bluelab's liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.7 If Bluelab is required to replace the Goods under this clause or the CCA, but is unable to do so, Bluelab may refund any money the Customer has paid for the Goods.
- 13.8 If the Customer is not a consumer within the meaning of the CCA, Bluelab'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 Bluelab at Bluelab's sole discretion;
 - b) limited to any warranty to which Bluelab is entitled, if Bluelab did not manufacture the Goods;
 - c) otherwise negated absolutely.
 - d) Limited to any quality assurance testing within Bluelab's operations
 - e) Limited to Goods paid for in full by the Customer
- 13.9 Subject to this clause 13, returns will only be accepted provided that:
- a) the Customer has complied with the provisions of clause 14.1; and
 - b) Bluelab 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.
- 13.10 Notwithstanding clauses 13.1 to 13.9 but subject to the CCA, Bluelab 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) no unauthorised works or modifications have taken place by the Customer;
 - c) the Customer using the Goods for any purpose other than that for which they were designed;
 - d) 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;
 - e) the Customer failing to follow any instructions or guidelines provided by Bluelab;
 - f) fair wear and tear, any accident, or act of God.
- 13.11 Notwithstanding anything contained in this clause if Bluelab is required by a law to accept a return then Bluelab will only accept a return on the conditions imposed by that law.
- 13.12 Any rectification work is to be completed by Bluelab staff in Bluelab's premises unless otherwise agreed upon.

14. Intellectual Property

14.1 Where Bluelab has designed, drawn or developed Goods for the Customer, then the copyright, patents or licences in any designs and drawings and documents shall remain the property of Bluelab. Under no circumstances may such designs, drawings and documents be used without the express written approval of Bluelab.

14.2 The Customer warrants that all designs, specifications or instructions given to Bluelab will not cause Bluelab to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Bluelab against any action taken by a third-party against Bluelab in respect of any such infringement.

14.3 The Customer agrees that Bluelab may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Bluelab 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 eighteen percent (18%) per annum (and at Bluelab'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 Bluelab any money the Customer shall indemnify Bluelab from and against all costs and disbursements incurred by Bluelab in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Bluelab's contract default fee, and bank dishonour fees).

15.3 Further to any other rights or remedies Bluelab may have under this contract, if a Customer has made payment to Bluelab, 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 Bluelab under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.

15.4 Without prejudice to Bluelab's other remedies at law Bluelab shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Bluelab shall, whether or not due for payment, become immediately payable if:

- a) any money payable to Bluelab becomes overdue, or in Bluelab's opinion the Customer will be unable to make a payment when it falls due;
- b) the Customer has exceeded any applicable credit limit provided by Bluelab;
- c) 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
- d) 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 Bluelab may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Bluelab may suspend or terminate the supply of Goods to the Customer. Bluelab will not be liable to the Customer for any loss or damage the Customer suffers because Bluelab has exercised its rights under this clause.

16.2 Bluelab 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 Bluelab shall repay to the Customer any money paid by the Customer for the Goods. Bluelab shall not be liable for any loss or damage whatsoever arising from such cancellation.

16.3 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 Bluelab 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-stocklist 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 Bluelab 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 Bluelab.

17.2 The Customer agrees that Bluelab may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:

- a) to assess an application by the Customer; and/or
 - b) to notify other credit providers of a default by the Customer; and/or
 - c) 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
 - d) 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 Bluelab 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 Bluelab 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 Customer'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 Customer; and/or
 - d) enabling the collection of amounts outstanding in relation to the Goods.
- 17.5 Bluelab may give information about the Customer 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 Customer including credit history.
- 17.6 The information given to the CRB may include:
- a) personal information as outlined in 18.1 above;
 - b) name of the credit provider and that Bluelab is a current credit provider to the Customer;
 - c) whether the credit provider is a licensee;
 - d) type of consumer credit;
 - 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
 - g) 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
 - h) Customer no longer has any overdue accounts and Bluelab has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - i) information that, in the opinion of Bluelab, the Customer has committed a serious credit infringement;
 - j) 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 Bluelab:
- a) a copy of the information about the Customer retained by Bluelab and the right to request that Bluelab correct any incorrect information; and
 - b) that Bluelab does not disclose any personal information about the Customer for the purpose of direct marketing.
- 17.8 Bluelab 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 agreement 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 Bluelab via e-mail. Bluelab 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 Customer has left any item with Bluelab for repair, modification, exchange or for Bluelab to perform any other service in relation to the item and Bluelab has not received or been tendered the whole of any monies owing to it by the Customer, Bluelab shall have, until all monies owing to Bluelab 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.
- 18.2 The lien of Bluelab shall continue despite the commencement of proceedings, or judgment for any monies owing to Bluelab 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:
- 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.
- 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. Dispute Resolution

20.1 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.

21. Building and Construction Industry Security of Payment Act 2002

21.1 At Bluelab'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.

21.2 Nothing in this agreement 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.

22. Trusts

22.1 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 Bluelab may have notice of the Trust, the Customer covenants with Bluelab 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 Bluelab (Bluelab 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.

23. General

23.1 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.

23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which Bluelab has its principal place of business, and are subject to the jurisdiction of the Courts of Victoria.

23.3 Subject to clause 13 Bluelab 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 Bluelab of these terms and conditions, and:

- a) the Customer shall not be entitled to claim for liquidated damages, unless the loss or expense suffered by the Customer is due to Bluelab negligence; and
- b) Bluelab's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods.

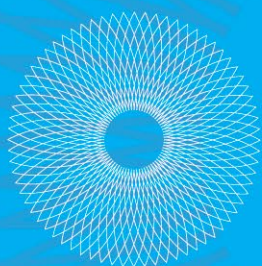
23.4 Bluelab may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.

23.5 The Customer cannot licence or assign without the written approval of Bluelab.

23.6 Bluelab 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 Bluelab's sub-contractors without the authority of Bluelab.

23.7 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.

23.8 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.



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