

Quality Air Equipment (WA) Pty Ltd

ABN: 66 145 765 680

20 Fisher Street, BELMONT, WA 6104

Ph (08) 9303 2338 - Fax 08 9303 4006

Email: saleswa@qualityair.com.auWebsite: www.qualityairequipment.com.au**CREDIT ACCOUNT APPLICATION**

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

Client's Details: ☐ Individual ☐ Sole Trader ☐ Trust ☐ Partnership ☐ Company ☐ Other:			
Full or Legal Name:			
Trading Name (if different from above):			
Physical Address:		State:	Postcode:
Billing Address:		State:	Postcode:
Email Address:			
Phone No:		Fax No:	Mobile No:
Personal Details: <i>(please complete if you are an Individual)</i>			
D.O.B.		Driver's Licence No:	
Business Details: <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>			
ABN:		ACN:	Date Established <i>(current owners)</i> :
Nature of Business:			
Paid Up Capital: \$		Estimated Monthly Purchases: \$	Credit Limit Required: \$
Principal Place of Business is: ☐ Rented ☐ Owned ☐ Mortgaged <i>(to whom)</i> :			
Directors / Owners / Trustee <i>(if more than two, please attach a separate sheet)</i>			
(1) Full Name:		D.O.B.	
Private Address:		State:	Postcode:
Mandatory: Attach a copy of your driver's license:		Phone No:	Mobile No:
(2) Full Name:		D.O.B.	
Private Address:		State:	Postcode:
Driver's Licence No:		Phone No:	Mobile No:
Account Terms: ☐ 30 Days ☐ COD ☐ Other:			
Purchase Order Required? ☐ YES ☐ NO		Accounts to be emailed? ☐ YES ☐ NO	
Accounts Email Address:			
Accounts Contact:		Phone No:	
Bank and Branch:		Account No:	
Trade References: <i>(please provide companies that are willing to do trade references)</i>			
Name:	Address:	Phone / Fax / Email:	
1.			
2.			
3.			

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Quality Air Equipment (WA) Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein.

SIGNED (CLIENT): _____ SIGNED (QAE WA): _____

Name: _____ Name: _____

Position: _____ Position: _____

WITNESS TO CLIENT'S SIGNATURE:

Signed: _____ Name: _____ Date: _____

OFFICE USE ONLY

Account / Ref. No.	CREDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	\$			/ /

Personal/Directors

Guarantee and Indemnity

IN CONSIDERATION of Quality Air Equipment (WA) Pty Ltd and its successors and assigns ("QAE WA") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

("the Client") [Insert Company Name In Box Provided]

I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

1. **GUARANTEE** the due and punctual payment to QAE WA of all monies which are now owing to QAE WA by the Client and all further sums of money from time to time owing to QAE WA by the Client in respect of goods and services supplied or to be supplied by QAE WA to the Client or any other liability of the Client to QAE WA, and the due observance and performance by the Client of all its obligations contained or implied in any contract with QAE WA, including but not limited to the Terms & Conditions of Trade signed by the Client and annexed to this Guarantee and Indemnity. If for any reason the Client does not pay any amount owing to QAE WA the Guarantor will immediately on demand pay the relevant amount to QAE WA. In consideration of QAE WA agreeing to supply the goods to the Client, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 ("PPSA") and unequivocally consents to QAE WA registering any interest so charged. Furthermore, it is agreed by both parties that where the Guarantor is acting in the capacity as a trustee for a trust, then the Guarantor agrees to charge all its right title and interest in any land realty, or other assets capable of being charged in its own capacity and in its capacity as trustee and shall be subject to the PPSA Registration as stated above. The Guarantor irrevocably appoints QAE WA and each director of QAE WA as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which QAE WA may reasonably require to:
 - (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (b) register any other document required to be registered by the PPSA or any other law; or
 - (c) correct a defect in a statement referred to in clause 1(a) or 1(b).
2. **HOLD HARMLESS AND INDEMNIFY** QAE WA on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, QAE WA in connection with:
 - (a) the supply of goods and/or services to the Client; or
 - (b) the recovery of monies owing to QAE WA by the Client including the enforcement of this Guarantee and Indemnity, and including but not limited to QAE WA's nominees contract default fee and legal costs; or
 - (c) monies paid by QAE WA with the Client's consent in settlement of a dispute that arises or results from a dispute between, QAE WA, the Client, and a third party or any combination thereof, over the supply of goods and/or services by QAE WA to the Client.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

3. **I/We have received, read and understood QAE WA's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of monies owing to QAE WA by the Client and all obligations herein have been fully paid satisfied and performed.
5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on QAE WA's part (whether in respect of the Client or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Client's obligations to QAE WA, each Guarantor shall be a principal debtor and liable to QAE WA accordingly.
6. If any payment received or recovered by QAE WA is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and QAE WA shall each be restored to the position in which they would have been had no such payment been made.
7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, the obligations and agreements on the part of the Guarantor, shall include the Guarantor's executors, administrators, successors and permitted assignments (where applicable) contained in this Guarantee and Indemnity shall bind them jointly and severally.
8. **I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Client to QAE WA.**
9. I/we irrevocably authorise QAE WA to obtain from any person or company any information which QAE WA may require for credit reference purposes. I/We further irrevocably authorise QAE WA to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with QAE WA as a result of this Guarantee and Indemnity being actioned by QAE WA.
10. The above information is to be used by QAE WA for all purposes in connection with QAE WA considering this Guarantee and Indemnity and the subsequent enforcement of the same.

GUARANTOR-1

SIGNED: _____

FULL NAME: _____

HOME ADDRESS: _____

DATE OF BIRTH: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____

OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this _____ day of _____ 20____

GUARANTOR-2

SIGNED: _____

FULL NAME: _____

HOME ADDRESS: _____

DATE OF BIRTH: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____

OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this _____ day of _____ 20____

Note: 1. If the Client is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).

2. If the Client is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

WARNING: THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT

Quality Air Equipment (WA) Pty Ltd – Terms & Conditions of Trade

1. Definitions
 - 1.1 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
 - 1.2 "QAE WA" means Quality Air Equipment (WA) Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Quality Air Equipment (WA) Pty Ltd.
 - 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting QAE WA to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
 - 1.4 "Goods" means all Goods or Services supplied by QAE WA to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
 - 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B. occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
 - 1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when using QAE WA's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.
 - 1.7 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between QAE WA and the Client in accordance with clause 6 below.
 - 1.8 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
2. Acceptance
 - 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods.
 - 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
 - 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
 - 2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with QAE WA and it has been approved with a credit limit established for the account.
 - 2.5 In the event that the supply of Goods requested exceeds the Client's credit limit and/or the account exceeds the payment terms, QAE WA reserves the right to refuse Delivery.
 - 2.6 None of QAE WA's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of QAE WA in writing nor is QAE WA bound by any such unauthorised statements.
3. Electronic Transactions Act
 - 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 Act 2000 (NSW), the Electronic Communications Act 2000 (SA), the Electronic Transactions Act 2001 (ACT), the Electronic Transactions (Victoria) Act 2000, the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (TAS), Section 10 of the Electronic Transactions Act 2011 (WA), (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.
4. Errors and Omissions
 - 4.1 The Client acknowledges and accepts that QAE WA 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 QAE WA 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 QAE WA 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 wilful misconduct of QAE WA; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.
5. Change in Control
 - 5.1 The Client shall give QAE WA not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by QAE WA as a result of the Client's failure to comply with this clause.
6. Price and Payment
 - 6.1 At QAE WA's sole discretion, the Price shall be either:
 - (a) as indicated on any invoice provided by QAE WA to the Client; or
 - (b) the Price as at the date of delivery of the Goods according to QAE WA's current price list; or
 - (c) QAE WA'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 either:
 - (i) seven (7) days for all TROX products; or
 - (ii) thirty (30) days for all QAE WA products.
 - QAE WA reserves the right to change the Price if a variation to QAE WA's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods beyond QAE WA's control (including, but not limited to, any variation as a result of increases to QAE WA in the cost of materials or overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which will be charged for on the basis of QAE WA's quotation and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by QAE WA within ten (10) working days. Failure to do so will entitle QAE WA 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.
 - At QAE WA's sole discretion, a non-refundable deposit may be required.
 - Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by QAE WA, which may be:
 - (a) on delivery of the Goods;
 - (b) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by QAE WA.
 - Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and QAE WA.
 - QAE WA may in its discretion allocate any payment received from the Client towards any invoice that QAE WA determines and may do so at the time of receipt or at any time afterwards. On any default by the Client, QAE WA may re-allocate any payments previously received and allocated. In the absence of any payment allocation by QAE WA, payment will be deemed to be allocated in such manner as preserves the maximum value of QAE WA's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
 - The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by QAE WA nor to withhold payment of any invoice because part of that invoice is in dispute.
 - Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to QAE WA an amount equal to any GST QAE WA must pay for any supply by QAE WA under this or any other contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
7. Delivery of Goods
 - 7.1 Delivery ("Delivery") of the Goods is taken to occur at the time that the Client or the Client's nominated carrier takes possession of the Goods at QAE WA's address.
 - 7.2 Any time specified by QAE WA for delivery of the Goods is an estimate only. The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. QAE WA will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. In the event that the Client is unable to take Delivery of the Goods as arranged then QAE WA shall be entitled to charge a twenty percent (20%) fee for storage.
8. Risk
 - 8.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
 - 8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, QAE WA is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by QAE WA is sufficient evidence of QAE WA's rights to receive the insurance proceeds without the need for any person dealing with QAE WA to make further enquiries.
 - 8.3 Any advice, recommendation, information, assistance or service provided by QAE WA in relation to Goods supplied is given in good faith, is based on QAE WA's own knowledge and experience and shall be accepted without liability on the part of QAE WA, and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods.
 - 8.4 QAE WA shall not be liable for any defect or damage resulting from incorrect or faulty installation carried out by any other third party.
9. Client's Acknowledgements
 - 9.1 The Client acknowledges that:
 - (a) it is their responsibility to ensure that all Goods, plant or equipment which QAE WA 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 QAE WA based the quotation on and therefore, the Client agrees to indemnify QAE WA against any costs incurred by QAE WA in rectifying such errors if required; and
 - (b) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in QAE WA's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by QAE WA; and
 - (c) while QAE WA may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that QAE WA has given these in good faith, and are estimates based on industry prescribed estimates.
10. Title
 - 10.1 QAE WA and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid QAE WA all amounts owing to QAE WA; and
 - (b) the Client has met all of its other obligations to QAE WA.
 - Receipt by QAE WA 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.
 - It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 10.1:
 - (a) the Client is only a bailee of the Goods and must return the Goods to QAE WA on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for QAE WA and must pay to QAE WA the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for QAE WA and must pay or deliver the proceeds to QAE WA on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of QAE WA and must sell, dispose of or return the resulting product to QAE WA as it so directs.
 - (e) the Client irrevocably authorises QAE WA to enter any premises where QAE WA believes the Goods are kept and recover possession of the Goods.
 - (f) QAE WA may recover possession of any Goods in transit whether or not Delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of QAE WA.
 - (h) QAE WA may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
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 Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to QAE WA for Services – that have previously been supplied and that will be supplied in the future by QAE WA to the Client.
 - 11.3 The Client undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which QAE WA 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, QAE WA 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 QAE WA;
 - (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 QAE WA;
 - (e) immediately advise QAE WA 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 QAE WA and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
 - 11.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
 - 11.6 The Client 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 QAE WA, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
 - 11.8 The Client must unconditionally ratify any actions taken by QAE WA 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 QAE WA agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
 - 12.2 The Client indemnifies QAE WA from and against all QAE WA's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising QAE WA's rights under this clause.
 - 12.3 The Client irrevocably appoints QAE WA and each director of QAE WA as the Client'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 Client's behalf.
13. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)
 - 13.1 The Client must inspect the Goods on Delivery and must within seven (7) days of Delivery notify QAE WA in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect

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- becomes evident. Upon such notification the Client must allow QAE WA 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 QAE WA 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, QAE WA makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. QAE WA's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5 If the Client is a consumer within the meaning of the CCA, QAE WA's liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6 If QAE WA is required to replace the Goods under this clause or the CCA, but is unable to do so, QAE WA may refund any money the Client has paid for the Goods.
- 13.7 If the Client is not a consumer within the meaning of the CCA, QAE WA's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by QAE WA at QAE WA's sole discretion;
 - (b) limited to any warranty to which QAE WA is entitled, if QAE WA 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 Client has complied with the provisions of clause 13.1; and
 - (b) QAE WA has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 13.9 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, QAE WA shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by QAE WA;
 - (e) fair wear and tear, any accident, or act of God.
- 13.10 QAE WA may in its absolute discretion accept non-defective Goods for return in which case QAE WA may require the Client to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.
- 13.11 Notwithstanding anything contained in this clause if QAE WA is required by a law to accept a return then QAE WA will only accept a return on the conditions imposed by that law.
14. Intellectual Property
- 14.1 Where QAE WA has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of QAE WA. Under no circumstances may such designs, drawings and documents be used without the express written approval of QAE WA.
- 14.2 The Client warrants that all designs, specifications or instructions given to QAE WA will not cause QAE WA to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify QAE WA against any action taken by a third party against QAE WA in respect of any such infringement.
- 14.3 The Client agrees that QAE WA may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which QAE WA has created for the Client.
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 QAE WA's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Client owes QAE WA any money the Client shall indemnify QAE WA from and against all costs and disbursements incurred by QAE WA in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, QAE WA's contract default fee, and bank dishonour fees).
- 15.3 Further to any other rights or remedies QAE WA may have under this contract, if a Client has made payment to QAE WA, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by QAE WA under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 15.4 Without prejudice to QAE WA's other remedies at law QAE WA shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to QAE WA shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to QAE WA becomes overdue, or in QAE WA's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by QAE WA;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
16. Cancellation
- 16.1 Without prejudice to any other remedies QAE WA may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions QAE WA may suspend or terminate the supply of Goods to the Client. QAE WA will not be liable to the Client for any loss or damage the Client suffers because QAE WA has exercised its rights under this clause.
- 16.2 QAE WA may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice QAE WA shall repay to the Client any money paid by the Client for the Goods. QAE WA shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.3 In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by QAE WA 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 Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
17. Privacy Policy
- 17.1 All emails, documents, images or other recorded information held or used by QAE WA is Personal Information, as defined and referred to in clause 17.3, and therefore considered Confidential Information. QAE WA acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). QAE WA acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by QAE WA that may result in serious harm to the Client, QAE WA will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 17.2 Notwithstanding clause 17.1, privacy limitations will extend to QAE WA in respect of Cookies where the Client utilises QAE WA's website to make enquiries. QAE WA agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to QAE WA when QAE WA sends an email to the Client, so QAE WA may collect and review that information ("collectively Personal Information")
- If the Client consents to QAE WA's use of Cookies on QAE WA's website and later wishes to withdraw that consent, the Client may manage and control QAE WA's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 17.3 The Client agrees that QAE WA may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 17.4 The Client consents to QAE WA being given a consumer credit report to collect overdue payment on commercial credit.
- 17.5 The Client agrees that personal credit information provided may be used and retained by QAE WA for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 17.6 QAE WA may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 17.7 The information given to the CRB may include:
- (a) Personal Information as outlined in 17.3 above;
 - (b) name of the credit provider and that QAE WA is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided QAE WA is a member of an approved QAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and QAE WA has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of QAE WA, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 17.8 The Client shall have the right to request (by e-mail) from QAE WA:
- (a) a copy of the Personal Information about the Client retained by QAE WA and the right to request that QAE WA correct any incorrect Personal Information; and
 - (b) that QAE WA does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 17.9 QAE WA will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 17.10 The Client can make a privacy complaint by contacting QAE WA via e-mail. QAE WA will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
18. Other Applicable Legislation
- 18.1 At QAE WA'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 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Construction Contracts Act 2004 (Western Australia), Building Industry Fairness (Security of Payment) Act 2017 (Queensland), Construction Contracts (Security of Payments) Act (Northern Territory of Australia), Building and Construction Industry Security of Payments Act 2009 (Tasmania), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) may apply.
- 18.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 18.1 (each as applicable), except to the extent permitted by the Act where applicable.
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. Trusts
- 20.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not QAE WA may have notice of the Trust, the Client covenants with QAE WA as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- (c) the Client will not without consent in writing of QAE WA (QAE WA will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
- (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.
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 in which state or territory the Goods and/or Services were provided by QAE WA to the Client however, in the event of a dispute that deems necessary for the matter to be referred to a Magistrates or higher Court then jurisdiction will be subject to the Courts in the state of Western Australia in which QAE WA has its principal place of business.
- 21.3 Subject to clause 13 QAE WA shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by QAE WA of these terms and conditions (alternatively QAE WA's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 21.4 QAE WA may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 21.5 The Client cannot licence or assign without the written approval of QAE WA.
- 21.6 QAE WA may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of QAE WA's subcontractors without the authority of QAE WA.
- 21.7 The Client agrees that QAE WA may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for QAE WA to provide Goods to the Client.
- 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, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. 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.