Pro-Am Australia – Terms & Conditions of Trade

1. Definitions

1.1 "Pro-Am" means N & L Small Nominees Pty Ltd ATF Norman Small Family Trust T/A Pro-Am Australia, its successors and assigns or any person acting on behalf of and with the authority of N & L Small Nominees Pty Ltd ATF Norman Small Family Trust T/A Pro-Am Australia.

1.2 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Pro-Am to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Customer's executors, administrators, successors and permitted assigns.

1.3 "Goods" means all Goods or Services supplied by Pro-Am to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).

1.4 "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.

1.5 "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 Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**

1.6 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Pro-Am and the Customer in accordance with clause 5 below.

1.7 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.

2.2 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 In the event that the supply of Goods request exceeds the Customers credit limit and/or the account exceeds the payment terms, Pro-Am reserves the right to refuse delivery.

2.5 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Pro-Am and it has been approved with a credit limit established for the account.

2.6 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, Pro-Am reserves the right to vary the Price with alternative Goods as per clause 5.2, subject to prior confirmation and acceptance.

2.7 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.

3. Errors and Omissions

3.1 The Customer acknowledges and accepts that Pro-Am 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 Pro-Am 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 Pro-Am in respect of the Services.

3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Pro-Am; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

4.1 The Customer shall give Pro-Am 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, and contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by Pro-Am as a result of the Customer's failure to comply with this clause.

5. Price and Payment

5.1 At Pro-Am's sole discretion, the Price shall be either:
(a) as indicated on any invoice provided by Pro-Am to the Customer; or
(b) the Price as at the date of delivery of the Goods according to Pro-Am's current price list; or
(c) Pro-Am's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days.

5.2 Pro-Am reserves the right to change the Price if a variation to Pro-Am's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods beyond Pro-Am's control (including, but not limited to, any variation as a result of increases to Pro-Am in the cost of labour, 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 or if during the course of the Services the Goods are not or cease to be available from Pro-Am's third party suppliers, then Pro-Am reserves the right to provide alternate Goods) which will be charged for on the basis of Pro-Am's quotation and will be shown as variations on the invoice. The Customer shall be required to respond to any variation submitted by Pro-Am within ten (10) working days. Failure to do so will entitle Pro-Am to add the cost of the variation to the Price.

5.3 At Pro-Am's sole discretion, a deposit may be required.

5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Pro-Am, which may be:
(a) before delivery of the Goods;
(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 thirty (30) days following the date of any invoice given to the Customer by Pro-Am.

5.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card, (excluding American Express and Diners Card - a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Pro-Am.

5.6 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Pro-Am nor to withhold payment of any invoice because part of that invoice is in dispute.

5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Pro-Am an amount equal to any GST Pro-Am must pay for any supply by Pro-Am under this or any other contract for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery of Goods

6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
(a) the Customer or the Customer's nominated carrier takes possession of the Goods at Pro-Am's address; or
(b) Pro-Am (or Pro-Am's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

6.2 At Pro-Am's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.

6.3 Pro-Am may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

6.4 Any time specified by Pro-Am for delivery of the Goods is an estimate only. The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. Pro-Am will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. In the event that the Customer is unable to take delivery of the Goods as arranged then Pro-Am shall be entitled to charge a reasonable fee for redelivery and/or storage.

7. On-Line Ordering

7.1 The Customer acknowledges and agrees that:
(a) Pro-Am does not guarantee the website's performance;
(b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by Pro-Am
(c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
(d) there are inherent hazards in electronic distribution, and as such Pro-Am cannot warrant against delays or errors in transmitting data between the Customer and Pro-Am including orders, and you agree that to the maximum extent permitted by law, Pro-Am will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
(e) when making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences;
(f) if the Customer is not the cardholder for any credit card being used to pay for the Goods, Pro-Am shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.

7.2 Pro-Am reserves the right to terminate the Customer's order if it learns that you have provided false or misleading information, interfered with other users or the administration of Pro-Am's business, or violated these terms and conditions.

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.

8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Pro-Am is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Pro-Am is sufficient evidence of Pro-Am's rights to receive the insurance proceeds without the need for any person dealing with Pro-Am to make further enquiries.

8.3 If the Customer requests Pro-Am to leave Goods outside Pro-Am'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.

9. Title

9.1 Pro-Am and the Customer agree that ownership of the Goods shall not pass until:
(a) the Customer has paid Pro-Am all amounts owing to Pro-Am; and
(b) the Customer has met all of its other obligations to Pro-Am.

Receipt by Pro-Am 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 Customer in accordance with clause 9.1:
(a) the Customer is only a bailee of the Goods and must return the Goods to Pro-Am on request.
(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Pro-Am and must pay to Pro-Am 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 Pro-Am and must pay or deliver the proceeds to Pro-Am 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 Pro-Am and must sell, dispose of or return the resulting product to Pro-Am as it so directs.
(e) the Customer irrevocably authorises Pro-Am to enter any premises where Pro-Am believes the Goods are kept and recover possession of the Goods.
(f) Pro-Am 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 Pro-Am.
(h) Pro-Am may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

Personal Property Securities Act 2009 ("PPSA")

In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

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 Pro-Am for Services – that have previously been supplied and that will be supplied in the future by Pro-Am to the Customer.

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 Pro-Am 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 10.3(a)(i) or 10.3(a)(ii);
(b) indemnify, and upon demand reimburse, Pro-Am 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 Pro-Am;
(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 Pro-Am;
(e) immediately advise Pro-Am 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.

Pro-Am 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.

The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

Unless otherwise agreed to in writing by Pro-Am, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

The Customer must unconditionally ratify any actions taken by Pro-Am under clauses 10.3 to 10.5.

Subject to any express provisions to the contrary (including those contained in this clause 10) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

Security and Charge

In consideration of Pro-Am 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).

The Customer indemnifies Pro-Am from and against all Pro-Am's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Pro-Am's rights under this clause.

The Customer irrevocably appoints Pro-Am and each director of Pro-Am as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.

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

The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify Pro-Am 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 Pro-Am to inspect the Goods.

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**).

Pro-Am acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Pro-Am makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Pro-Am's liability in respect of these warranties is limited to the fullest extent permitted by law.

If the Customer is a consumer within the meaning of the CCA, Pro-Am's liability is limited to the extent permitted by section 64A of Schedule 2.

If Pro-Am is required to replace the Goods under this clause or the CCA, but is unable to do so, Pro-Am may refund any money the Customer has paid for the Goods.

If the Customer is not a consumer within the meaning of the CCA, Pro-Am'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 Pro-Am at Pro-Am's sole discretion;
(b) limited to any warranty to which Pro-Am is entitled, if Pro-Am did not manufacture the Goods;
(c) otherwise negated absolutely.

Subject to this clause 12, returns will only be accepted provided that:
(a) the Customer has complied with the provisions of clause 12.1; and
(b) Pro-Am 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.

Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, Pro-Am shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
(a) the Customer failing to properly maintain or store any Goods;
(b) the Customer using the Goods for any purpose other than that for which they were designed;
(c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
(d) the Customer failing to follow any instructions or guidelines provided by Pro-Am;
(e) fair wear and tear, any accident, or act of God.

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 second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Pro-Am 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 Pro-Am has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 12.10.

Pro-Am may in its absolute discretion accept non-defective Goods for return in which case Pro-Am may require the Customer to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.

Notwithstanding anything contained in this clause if Pro-Am is required by a law to accept a return then Pro-Am will only accept a return on the conditions imposed by that law.

Intellectual Property

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

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

The Customer agrees that Pro-Am may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Pro-Am has created for the Customer.

Default and Consequences of Default

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 Pro-Am's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

If the Customer owes Pro-Am any money the Customer shall indemnify Pro-Am from and against all costs and disbursements incurred by Pro-Am in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Pro-Am's contract default fee, and bank dishonour fees).

Further to any other rights or remedies Pro-Am may have under this contract, if a Customer has made payment to Pro-Am, 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 Pro-Am under this clause 14 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.

Without prejudice to Pro-Am's other remedies at law Pro-Am shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Pro-Am shall, whether or not due for payment, become immediately payable if:
(a) any money payable to Pro-Am becomes overdue, or in Pro-Am'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 Pro-Am;
(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.

Cancellation

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

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

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 Pro-Am as a direct result of the cancellation (including, but not limited to, any loss of profits).

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.

Privacy Policy

All emails, documents, images or other recorded information held or used by Pro-Am is Personal Information, as defined and referred to in clause 16.3, and therefore considered Confidential Information. Pro-Am 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"). Pro-Am acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by Pro-Am that may result in serious harm to the Customer, Pro-Am will notify the Customer 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 Customer by written consent, unless subject to an operation of law.

Notwithstanding clause 16.1, privacy limitations will extend to Pro-Am in respect of Cookies where transactions for purchases/orders transpire directly from Pro-Am's website. Pro-Am 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 Customer's:
(a) IP address, browser, email client type and other similar details;
(b) tracking website usage and traffic; and
(c) reports are available to Pro-Am when Pro-Am sends an email to the Customer, so Pro-Am may collect and review that information ("collectively Personal Information")

In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Pro-Am's website.

The Customer agrees for Pro-Am to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by Pro-Am.

The Customer agrees that Pro-Am 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.

The Customer consents to Pro-Am being given a consumer credit report to collect overdue payment on commercial credit.

The Customer agrees that personal credit information provided may be used and retained by Pro-Am 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.

Pro-Am 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.

The information given to the CRB may include:
(a) Personal Information as outlined in 16.3 above;
(b) name of the credit provider and that Pro-Am 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 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 Pro-Am has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
(g) information that, in the opinion of Pro-Am, the Customer has committed a serious credit infringement;
(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars ($150).

The Customer shall have the right to request (by e-mail) from Pro-Am:
(a) a copy of the Personal Information about the Customer retained by Pro-Am and the right to request that Pro-Am correct any incorrect Personal Information; and
(b) that Pro-Am does not disclose any Personal Information about the Customer for the purpose of direct marketing.

Pro-Am 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.

The Customer can make a privacy complaint by contacting Pro-Am via e-mail. Pro-Am 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.

Service of Notices

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.

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.

Trusts

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 Pro-Am may have notice of the Trust, the Customer covenants with Pro-Am 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 Pro-Am (Pro-Am 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.

General

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.

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

Subject to clause 12 Pro-Am 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 Pro-Am of these terms and conditions (alternatively Pro-Am's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

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

The Customer must not licence or assign without the written approval of Pro-Am.

The Customer agrees that Pro-Am may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to 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 Pro-Am to provide Goods to the Customer.

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.

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.

Please note that a larger print version of these terms and conditions is available from Pro-Am on request.

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