

# QMW Industries Pty Ltd - ABN 12 011 047 760: - TERMS AND CONDITIONS OF TRADE

## 1. Definitions

- 1.1 "Seller" means QMW INDUSTRIES PTY LTD, ABN 12 011 047 760, its successors and assigns or any person acting on behalf of and with the authority of QMW INDUSTRIES PTY LTD.
- 1.2 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting the Seller to provide Goods and Services as specified in any proposal, quotation, order, invoice or other documentation:
  - (a) if there is more than one Customer, is a reference to each Customer jointly and severally;
  - (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 "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.
- 1.4 "Goods" means all Goods or Services supplied by the Seller 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).
- 1.5 "Price" means the Price payable (excl. any GST where applicable) for the Goods as agreed between the Seller and the Customer in accordance with clause 5 below.
- 1.6 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999".

## 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these Terms and Conditions of Trade if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These Terms and Conditions of Trade may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract or arrangement between the Customer and the Seller.
- 2.3 Any advice, recommendation, information, assistance or service provided by the Seller in relation to Goods supplied is given in good faith, is based on the Seller's own knowledge and experience and shall be accepted without liability on the part of the Seller and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods.
- 2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with the Seller and it has been approved by the Seller with a credit limit established for the account.
- 2.5 In the event that the supply of Goods requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Seller reserves the right to refuse delivery.
- 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, the Seller reserves the right to vary the Price by supplying alternative Goods as per clause 3.2.
- 2.7 Electronic signatures shall be deemed to have been accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

## 3. Pricing

- 3.1 Prices quoted for the supply of goods and services exclude GST and any other taxes or duties imposed on or in relation to the Goods. Any such GST and other taxes or duties are in addition to the Customer's account.
- 3.2 At the Seller's sole discretion, the Price shall be either:
  - (a) as indicated on any invoice provided by the Seller to the Customer; or
  - (b) the Seller's quoted price (subject to clause 3.3) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days will apply.
- 3.3 If the Customer requests any variation to the Agreement, the Seller may increase the price in account of the variation.
- 3.4 Where there is any change in the costs incurred by the Seller in relation to Goods, the Seller may vary its price to take into account of any such change, by notifying the Customer.
- 3.5 At the Seller's sole discretion, a non-refundable deposit may be required to be paid before any work is commenced.

## 4. Payment

- 4.1 The time for payment for the Goods is of the essence.
- 4.2 The Price will be payable by the Customer on the date/s determined by the Seller, which may be:
  - (a) on delivery of the Goods;
  - (b) by way of installments/progress payments in accordance with the Seller's payment schedule;
  - (c) within fourteen (14) days in which a statement is posted to the Customer's address or the Customer's address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Seller.
- 4.3 Payment may be made by cheque, bank cheque, credit card, cash, electronic/on-line banking, or by any other method as agreed to between the Customer and the Seller.
- 4.4 Payment by cheque is not deemed to have been received until the proceeds of the cheque have cleared.
- 4.5 Payment made by credit card will incur a 2% surcharge.
- 4.6 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

the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.

- 4.7 Prices quoted for the supply of imported goods are based upon the currency exchange rate prevailing as at the date the Seller places its order on the overseas supplier. If there is any variation in the currency exchange rate for any reason, then the price payable by the Customer to the Seller will be adjusted in accordance with any increase or decrease in the Australian Dollar exchange rate.
- 4.8 Prices quoted for supply of Goods exclude GST and any other taxes or duties imposed on or in relation to the Goods. In addition to the Price the Customer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller 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.
- 4.9 Payment terms may be revoked or amended at the Seller's sole discretion, immediately upon giving the Customer written notice.

## 5. Delivery of Goods

- 5.1 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 the Seller's address; or
  - (b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 5.2 At the Seller's sole discretion, the cost of delivery is in addition to the Price.
- 5.3 The Seller may deliver the Goods in separate installments. Each separate installment shall be invoiced and paid in accordance with the provisions in these Terms and Conditions of Trade.
- 5.4 Any time specified by the Seller for delivery of the Goods is an estimate only and the Seller 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 attempt to enable the Goods to be delivered at the time and place that was agreed between both parties. In the event that the Seller is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage of the Goods.

## 6. Risk

- 6.1 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.
- 6.2 If any of the Goods are damaged, lost or destroyed following delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms and Conditions of Trade by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 6.3 If the Customer requests the Seller is to leave Goods outside the Seller'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.
- 6.4 The Customer acknowledges that Goods supplied may:
  - (a) fade or change colour over time;
  - (b) expand, contract or distort as a result of exposure to heat, cold, weather;
  - (c) mark or stain if exposed to certain substances; and
  - (d) be damaged or disfigured by impact or scratching.

## 7. Title

- 7.1 The Seller and the Customer agree that ownership of the Goods shall not pass to the Customer until:
  - (a) the Customer has paid the Seller all amounts owing to the Seller; and
  - (b) the Customer has met all of its other obligations to the Seller.
- 7.2 Receipt by the Seller 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.
- 7.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 7.1;
  - (a) the Customer is only a bailee of the Goods and must return the Goods to the Seller on request;
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance claim in the event of the Goods are 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 the Seller and must pay or deliver the proceeds to the Seller on demand;
  - (d) the Customer should not convert or process the Goods or intermix them with other products but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs;
  - (e) the Customer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods in accordance with the applicable law.
  - (f) the Seller 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 the Seller; and
  - (h) the Seller may commence proceedings to recover the price of the Goods sold and any other associated costs and expenses even if ownership of the Goods has not passed to the Customer.

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

- 8.1 In this clause the term financing statement, financing change statement, security Agreement, and security interest has the meaning given to it by the PPSA.
  - 8.2 Upon assenting to these Terms and Conditions of Trade in writing the Customer acknowledges and agrees that these Terms and Conditions of Trade 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 the Seller for Goods – that have previously been supplied and that will be supplied in the future by the Seller to the Customer.
  - 8.3 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 the Seller 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 8.3(a)(i) or 8.3(a)(ii).
    - (b) indemnify, and upon demand reimburse, the Seller 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 the Seller;
    - (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 the Seller; and
    - (e) immediately advise the Seller of any material change to its business practices, of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
  - 8.4 The Seller 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 of Trade.
  - 8.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
  - 8.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
  - 8.7 Unless otherwise agreed to in writing by the Seller, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
  - 8.8 The Customer must unconditionally ratify any actions taken by the Seller under clauses 8.3 to 8.5.
  - 8.9 Subject to any express provisions to the contrary (including those contained in this clause 8) nothing in these Terms and Conditions of Trade is intended to have the effect of contracting out of any of the provisions of the PPSA.
- ## 9. Collateral & Assignment
- 9.1 The Customer hereby charges all its right, title and interest in the property or properties referred to in the Customer's Credit Application and also any property or properties that it owns currently or may acquire in the future solely or jointly or have or become to have a beneficial interest in, in favour of the Seller, with the due and punctual observance and performance of all the obligations of the Customer. The Customer indemnifies the Seller against all expenses and legal costs (on a solicitor/own client basis) for preparing, lodging and removing any caveat.
    - 9.2 The Customer hereby acknowledges that the Seller may at its discretion register and lodge a caveat(s) on such property or properties in respect of the interests conferred on it under clause 9.1. Such registration of a caveat by the Seller over the Customer's property or properties must not be challenged by the Customer in any way whatsoever, and the Customer agrees not to take any steps in filing a "lapsing notice" via the Land Titles Office to have the caveat removed, until such time that the Customer has paid all monies owing by it to the Seller as claimed from time to time.
- ## 10. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)
- 10.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify the Seller in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description of the Goods or quotation. 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 the Seller to inspect the Goods.
  - 10.2 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).
  - 10.3 The Seller acknowledges that nothing in these Terms and Conditions of Trade purports to modify or exclude the Non-Excluded Guarantees.
  - 10.4 If the Customer is a consumer within the meaning of the CCA, the Seller's liability is limited to the extent permitted by section 64A of Schedule 2 of the CCA.
  - 10.5 If the Seller is required to replace the Goods under this clause or the CCA, but is unable to do so, the Seller may refund any money to the Customer it has paid for the Goods.
  - 10.6 Subject to this clause 10, returns will only be accepted provided that:
    - (a) the Customer has complied with the provisions of clause 10.1;
    - (b) the Seller has agreed that the Goods are defective;
    - (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 reasonably possible.
  - 10.7 The Seller may in its absolute discretion accept non-defective Goods for return in which case the Seller may require the Customer to pay handling fees of up to twenty five percent (25%) of the value of the returned Goods plus any freight costs.
  - 10.8 Notwithstanding anything contained in this clause if the Seller is required by a law to accept a return then the Seller will only accept a return on the conditions imposed by that law.



# QMW Industries Pty Ltd - ABN 12 011 047 760: - TERMS AND CONDITIONS OF TRADE

- 10.9 Subject to clause 10.1, customised, or non-stock list items or incidental items made or ordered to the Customer's specifications are not acceptable for credit or return.
- 11. Intellectual Property**
- 11.1 Where the Seller has engineered, designed, drawn or developed Goods for the Customer, then the copyright in any such designs and drawings and documents shall remain the property of the Seller. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Seller.
- 11.2 The Customer warrants that all designs, specifications or instructions given to the Seller for the purpose of manufacturing Goods on their behalf will not cause the Seller to infringe any patent, registered design or trademark in satisfying Customer's order and the Customer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 11.3 The Customer agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Customer.
- 12. Accuracy of Customer's Plans and Measurements**
- 12.1 In the event the Customer gives information relating to the Goods (including plans, specifications, measurements, quantities and other information provided by the Customer for the purpose of manufacturing Goods on their behalf then:
- (a) it is the Customer's responsibility to verify the accuracy of the information before the Customer or the Seller places an order based on that information. The Seller accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause;
- (b) the Seller shall be entitled to rely on the accuracy of such information. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Seller accepts no responsibility for any loss, damages, or costs however resulting therefrom.
- 13. Dimensions, Plans and Specifications**
- 13.1 All customary engineering industry standard tolerances shall apply to the dimensions and measurements shown on drawings associated with the Goods, unless the Seller and the Customer agree otherwise in writing.
- 14. Default and Consequences of Default**
- 14.1 If the Customer defaults in payment by the due date of any amount payable to the Seller, then all money which would become payable by the Customer to the Seller at a later date on any account, becomes immediately due and payable without the need of providing notice to the Customer, and the Seller may, without prejudice to any of its other accrued or contingent rights:
- (a) 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 the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment;
- (b) charge the Customer a late payment administration fee equal to 10% of the invoice to a maximum of \$200 plus GST;
- (c) charge the customer for, and the Customer must indemnify the Seller from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;
- (d) cease or suspend supply of any further goods or services to the Customer
- (e) by written notice to the Customer, the Seller may cease work and Terminate any Contract or Agreement with the Customer.
- 14.2 Clauses 14.1(d) and 14.1(e) may also be relied upon, at the Sellers option:
- (a) where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.
- 15. Cancellation**
- 15.1 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Customer. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.
- 15.2 The Seller may cancel any contract or agreement to which these Terms and Conditions of Trade apply or cancel the delivery of Goods at any time by giving written notice to the Customer in writing. On giving such notice the Seller shall repay to the Customer any money paid by the Customer for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.3 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 the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stock list items, will definitely not be accepted once an order has been placed and production has commenced.
- 16. Change In Control**
- 16.1 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customers Company, Trust or Business 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, change of trustees, or business practice). The Customer shall be liable for any loss incurred by the supplier as a result of the Customer's failure to comply with this clause.
- 17. Privacy**
- 17.1 All emails, documents, images or other recorded information held or used by the Seller is Personal Information, as defined and referred to in clause 17.2, and therefore considered Confidential Information. The Seller 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"). The Seller acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by the Seller that may result in serious harm to the Customer, the Seller 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.
- 17.2 The Customer agrees to the Seller obtaining 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 the Seller.
- 17.3 The Customer agrees that the Seller 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;
- (b) to notify other credit providers of a default by the Customer;
- (c) to exchange information with other credit providers as to the status of the Customers 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.
- 17.4 The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit.
- 17.5 The Customer agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods;
- (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods;
- (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.
- 17.6 The Seller may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report; allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 17.7 The information given to the CRB may include:
- (a) personal information as outlined in 17.1 above;
- (b) name of the credit provider and that the Seller 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 the Seller has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of the Seller, 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).
- 17.8 The Customer shall have the right to request (by email) from the Seller:
- (a) a copy of the information about the Customer retained by the Seller and the right to request that the Seller correct any incorrect information; and
- (b) that the Seller does not disclose any personal information about the Customer for the purpose of direct marketing.
- 17.9 The Seller will destroy personal information upon the Customer's request (by email) or if it is no longer required unless it is required in order to fulfill the obligations of this Contract or Agreement with the Seller is required to be maintained and/or stored in accordance with the law.
- 17.10 The Customer can make a privacy complaint by contacting the Seller via email. The Seller will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 18. Trusts**
- 18.1 If the Customer at any time upon or subsequent to entering in to the Contract or Agreement is acting in the capacity of trustee of any trust ("Trust") then whether or not QMW INDUSTRIES PTY LTD may have notice of the Trust, the Customer covenants with QMW INDUSTRIES PTY LTD as follows:
- (a) the Contract or Agreement 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 or Agreement 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 QMW INDUSTRIES PTY LTD 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.
- 19. Service of Notices**
- 19.1 Any written notice given under the Terms and Conditions of this Contract or Agreement 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 or Agreement;
- (c) by sending it by registered post to the address of the other party as stated in this Contract or Agreement;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract or Agreement, on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- (f) Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 20. General**
- 20.1 The failure by either party to enforce any provision of these Terms and Conditions of Trade 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 of Trade shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2 These Terms and Conditions of Trade and any Contract or Agreement to which they apply shall be governed by the laws of Queensland, the state in which the Seller has its principal place of business and are subject to the jurisdiction of the courts in Brisbane.
- 20.3 Subject to clause 9, the Seller 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 the Seller of these Terms and Conditions of Trade (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the price of the Goods).
- 20.4 The Seller may licence and/or assign all or any part of its rights and/or obligations under this Contract or Agreement without the Customer's consent.
- 20.5 The Customer cannot licence or assign without the written approval of the Seller.
- 20.6 The Seller may elect to subcontract out any part of the manufacture of the Goods but shall not be relieved from any liability or obligation under this Contract or Agreement by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Seller's subcontractors without the authority of the Seller.
- 20.7 The Customer agrees that the Seller may amend these Terms and Conditions of Trade by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Seller to provide Goods to the Customer.
- 20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lockout, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 20.9 Both parties warrant that they have the power to enter into this Contract or Agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that these Terms and Conditions of Trade create a binding and valid legal obligations on them.

