Ezy Homes (Australia) Pty Ltd – Terms & Conditions of Trade

1. Definitions

1.1 "Supplier" means Ezy Homes (Australia) Pty Ltd ATF Ezy Homes Unit Trust T/A Ezy Homes (Australia) Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Ezy Homes (Australia) Pty Ltd ATF Ezy Homes Unit Trust T/A Ezy Homes (Australia) Pty Ltd.

1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Kit Home or 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 part of a Trust, shall be bound in their capacity as a trustee; and
(c) includes the Client's executors, administrators, successors and permitted assigns.

1.3 "Kit Home" means all goods or Services supplied by the Supplier to the Client at the Client's request from time to time (where the context so permits the terms 'Kit Home' or 'Services' shall be interchangeable for the other).

1.4 "Price" means the Price payable (plus any GST where applicable) for the Kit Home as agreed between the Supplier and the Client in accordance with clause 5 below.

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

2. Acceptance

2.1 The 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 Kit Home.

2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and the Supplier.

2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

2.4 The Client acknowledges that the supply of the Kit Home on credit shall not take effect until the Client has completed a credit application with the Supplier and it has been approved with a credit limit established for the account.

2.5 In the event that the supply of the Kit Home request exceeds the Client's credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse delivery.

2.6 None of the Supplier's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Supplier in writing nor is the Supplier bound by any such unauthorised statements.

3. Errors and Omissions

3.1 The Client acknowledges and accepts that the Supplier 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 the Supplier 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 the Supplier 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 the Supplier, the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

4.1 The Client shall give the Supplier 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, change in trustees, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.

5. Price and Payment

5.1 At the Supplier's sole discretion, the Price shall be either:
(a) as indicated on any invoice provided by the Supplier to the Client; or
(b) the Price as at the date of delivery of the Kit Home according to the Supplier's current price list; or
(c) the Supplier'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 thirty (30) days.

5.2 The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Kit Home (including, but not limited to, where additional Services are required due to the discovery of unforeseen circumstances or as a result of increases to the Supplier 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) which are beyond the Supplier's control will be charged for on the basis of the Supplier's quotation and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier 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.

5.3 Time for payment for the Kit Home being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:
(a) on delivery of the Kit Home;
(b) by way of instalments/progress payments in accordance with the Supplier's payment schedule;
(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 seven (7) days following the date of any invoice given to the Client by the Supplier.

5.4 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Supplier.

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

5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other contract for the sale of the Kit Home. 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.

6. Delivery

6.1 Delivery ("**Delivery**") of the Kit Home is taken to occur at the time that:
(a) the Client or the Client's nominated carrier takes possession of the Kit Home at the Supplier's address; or
(b) the Supplier (or the Supplier's nominated carrier) delivers the Kit Home to the Client's nominated address even if the Client is not present at the address.

6.2 At the Supplier's sole discretion, the cost of delivery is included in the Price.

6.3 The Supplier may deliver the Kit Home 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 the Supplier for delivery of the Kit Home is an estimate only. The Client must take delivery by receipt or collection of the Kit Home whenever they are tendered for delivery. The Supplier 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 Kit Home as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.

7. Export Contracts

7.1 FOB (Free On Board) means the Supplier fulfils their obligation to deliver when the Kit Home has passed over the ship's rail at the named port of shipment. This means that the Client has to bear all costs and risks to loss of or damage to the Kit Home from that point. The Supplier is required to clear the Kit Home for export.

7.2 CIF (Cost, Insurance and Freight) means the Supplier is obligated to pay the costs and freight necessary to bring the Kit Home to the named port of destination, and is further obligated to procure and pay for marine insurance against the loss, Client's risk of loss or damage to the Kit Home during carriage. The Supplier is required to clear the Kit Home for export.

7.3 In the event that the Kit Home are exported from Australia, delivery of the Kit Home will occur at either FOB or CIF contract.

7.4 In the event of a FOB contract the following shall apply:
(a) the Kit Home shall be delivered to the Client by way of delivery to and placement upon the Client's nominated form of transport on the delivery date. The Supplier shall promptly notify the Client that the Kit Home have been delivered aboard. Risk in the Kit Home shall pass to the Client upon such delivery being effected. The Supplier shall promptly provide the Client with a clean shipped bill of lading and an invoice in respect of the Kit Home.
(b) the Client shall reserve the necessary space on its nominated form of transport and give the Supplier due notice of the location (including, if necessary, loading berth) of that transport. The Client shall bear any additional costs incurred by the Supplier and/or Client as a result of the Client's nominated form of transport being unavailable to load the Kit Home on the delivery date.
(c) in the event of a CIF contract the following shall apply:
(a) the Kit Home shall be delivered to the Client by delivery to and placement upon the Client's nominated form of transport on or before the delivery date. The Supplier shall procure a contract of carriage and insure the Kit Home from dispatch until delivery on terms current in the trade for the benefit of the Client. The Kit Home shall be at the risk of the Client as they are loaded on board. The Supplier shall promptly tender to the Client a clean shipped bill of lading, the insurance policy and an invoice in respect of the Kit Home.
(b) the Client shall accept the documents tendered by the Supplier if they correspond to this contract and take delivery of the Kit Home at the port of destination and bear all other costs and charges arising out of shipment of the Kit Home to the port of destination.

8. Access

8.1 The Client shall ensure that the Supplier has clear and free access to the site at all times to enable them to effect delivery of the Kit Home. The Supplier shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Supplier.

9. Risk

9.1 Risk of damage to or loss of the Kit Home passes to the Client on Delivery and the Client must insure the Kit Home on or before Delivery.

9.2 If any of the Kit Home is damaged or destroyed following delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Kit Home. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.

9.3 If the Client requests the Supplier to leave Kit Home outside the Supplier's premises for collection or to deliver the Kit Home to an unattended location, then such Kit Home shall be left at the Client's sole risk.

9.4 The Client acknowledges that the Kit Home supplied may:
(a) exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst the Supplier will make every effort to match sales samples to the finished Kit Home the Supplier accepts no liability whatsoever where such samples differ to the finished Kit Home supplied; and
(b) fade or change colour over time; and
(c) expand, contract or distort as a result of exposure to heat, cold, weather; and
(d) mark or stain if exposed to certain substances; and
(e) be damaged or disfigured by impact or scratching.

9.5 Any advice, recommendation, information, assistance or service provided by the Supplier in relation to Kit Home or Services supplied is given in good faith, is based on the Supplier's own knowledge and experience and shall be accepted without liability on the part of the Supplier 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 Kit Home or Services.

10. Dimensions, Plans and Specifications

10.1 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in the Supplier 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 the Supplier.

10.2 All customary building industry tolerances shall apply to the dimensions and measurements of the Kit Home unless the Supplier and the Client agree otherwise in writing.

10.3 The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client.

10.4 Where the Client is to supply the Supplier with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. The Supplier shall not be liable whatsoever for any errors in the Kit Home that are caused by incorrect or inaccurate data being supplied by the Client.

If the giving of an estimate or Quotation for the supply of Kit Home involves the Supplier estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of the Supplier's estimated measurements and quantities, before the Client places an order based on such estimate or accepts such quotation.

Should the Client require any changes to the Supplier's estimated measurements and quantities, the Client shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.

11. Title

11.1 The Supplier and the Client agree that ownership of the Kit Home shall not pass until:
(a) the Client has paid the Supplier all amounts owing to the Supplier; and
(b) the Client has met all of its other obligations to the Supplier.

11.2 Receipt by the Supplier 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.

11.3 It is further agreed that, until ownership of the Kit Home passes to the Client in accordance with clause 11.1:
(a) the Client is only a bailee of the Kit Home and must return the Kit Home to the Supplier on request;
(b) the Client holds the benefit of the Client's insurance of the Kit Home on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Kit Home being lost, damaged or destroyed;
(c) the Client must not sell, dispose, or otherwise part with possession of the Kit Home other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Kit Home then the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand;
(d) the Client should not convert or process the Kit Home 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 the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs;
(e) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Kit Home are kept and recover possession of the Kit Home;
(f) the Supplier may recover possession of any Kit Home in transit whether or not delivery has occurred;
(g) the Client shall not charge or grant an encumbrance over the Kit Home nor grant nor otherwise give away any interest in the Kit Home while they remain the property of the Supplier;
(h) the Supplier may commence proceedings to recover the Price of the Kit Home sold notwithstanding that ownership of the Kit Home has not passed to the Client.

12. Personal Property Securities Act 2009 ("PPSA")

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

12.2 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 Kit Home and/or collateral (account) – being a monetary obligation of the Client to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Client.

12.3 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 the Supplier may reasonably require for;
(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
(ii) register any other document required to be registered by the PPSA; or
(iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
(b) indemnify, and upon demand reimburse, the Supplier 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 Kit Home charged thereby;
(c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Kit Home and/or collateral (account) in favour of a third party without the prior written consent of the Supplier;
(e) immediately advise the Supplier of any material change in its business practices of selling the Kit Home which would result in a change in the nature of proceeds derived from such sales.

12.4 The Supplier 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.

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

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

12.7 Unless otherwise agreed to in writing by the Supplier, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

12.8 The Client must unconditionally ratify any actions taken by the Supplier under clauses 12.3 to 12.5.

12.9 Subject to any express provisions to the contrary (including those contained in this clause 12) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge

13.1 In consideration of the Supplier agreeing to supply the Kit Home, 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).

13.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.

13.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

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

14.1 The Client must inspect the Kit Home on delivery and must within seven (7) days of delivery notify the Supplier 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 Kit Home as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Client must allow the Supplier to inspect the Kit Home.

14.2 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**).

14.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

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

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

If the Supplier is required to replace the Kit Home under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Client has paid for the Kit Home.

If the Client is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Kit Home is:
(a) limited to the value of any express warranty or warranty card provided to the Client by the Supplier at the Supplier's sole discretion;
(b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Kit Home;
(c) otherwise negated absolutely.

14.5 Subject to this clause 14, returns will only be accepted provided that:
(a) the Client has complied with the provisions of clause 14.1; and
(b) the Supplier has agreed that the Kit Home are defective; and
(c) the Kit Home are returned within a reasonable time at the Client's cost (if that cost is not significant); and
(d) the Kit Home are returned in as close a condition to that in which they were delivered as is possible.

14.6 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, the Supplier 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 Kit Home;
(b) the Client using the Kit Home for any purpose other than that for which they were designed;
(c) the Client continuing the use of any Kit Home 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 the Supplier;
(e) fair wear and tear, any accident, or act of God.

14.7 The Supplier may in its absolute discretion accept a non-defective Kit Home for return in which case the Supplier may require the Client to pay handling fees of up to fifteen percent (15%) of the value of the returned Kit Home plus any freight costs.

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

15. Intellectual Property

15.1 Where the Supplier has designed, drawn or developed Kit Home for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Supplier. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.

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

15.3 The Client agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Kit Home which the Supplier has created for the Client.

16. Default and Consequences of Default

16.1 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 the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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

16.3 Further to any other rights or remedies the Supplier may have under this contract, if a Client has made payment to the Supplier, 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 the Supplier under this clause 16 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.

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

17. Building Approvals

17.1 The Client shall obtain (at the expense of the Client) all building and/or planning approvals that may be required for the Kit Home prior to the commencement of the Services. If such is not obtained within seventy-five (75) days from the date of this contract, the Supplier may, by written notice ending the contract (as per clause 18.2). The Supplier shall not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause furthermore the Client is required to pay for the amount of any and all expenses the Supplier has incurred as a direct result of the cancellation.

18. Cancellation

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

18.2 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of the Kit Home at any time before the Kit Home are delivered by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any money paid by the Client for the Kit Home. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.

18.3 In the event that the Client cancels delivery of the Kit Home the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).

18.4 Cancellation of orders for a Kit Home 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.

19. Privacy Act 1988

19.1 The Client agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Supplier.

19.2 The Client agrees that the Supplier 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.

19.3 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.

19.4 The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):
(a) the provision of the Kit Home; and/or
(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Kit Home; 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 Kit Home.

19.5 The Supplier 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.

19.6 The information given to the CRB may include:
(a) personal information as outlined in 19.1 above;
(b) name of the credit provider and that the Supplier 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, 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 the Supplier 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 Supplier, 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).

19.7 The Client shall have the right to request (by e-mail) from the Supplier:
(a) a copy of the information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect information; and
(b) that the Supplier does not disclose any personal information about the Client for the purpose of direct marketing.

19.8 The Supplier 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.

19.9 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier 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

20. Building and Construction Industry Payments Act 2004

20.1 At the Supplier sole discretion, if there are any disputes or claims for unpaid Kit Home and/or Services then the provisions of the Building and Construction Industry Payments Act 2004 may apply.

20.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.

21. Service of Notices

21.1 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.

21.2 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.

22. Trusts

22.1 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 the Supplier may have notice of the Trust, the Client covenants with the Supplier 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 the Supplier (the Supplier 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.

23. General

23.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

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

23.3 Subject to clause 14 the Supplier 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 the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Kit Home).

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

23.5 The Client cannot licence or assign without the written approval of the Supplier.

23.6 The Supplier 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 the Supplier's sub-contractors without the authority of the Supplier.

23.7 The Client agrees that the Supplier 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 the Supplier to provide the Kit Home to the Client. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

23.8 Both parties warrant that they have the power to enter into this 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 the Supplier on request.

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