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## Customvac Australia – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **"Customvac"** means Walinga Australia Pty Ltd T/A Customvac Australia, its successors and assigns or any person acting on behalf of and with the authority of Walinga Australia Pty Ltd T/A Customvac Australia
- 1.3 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Customvac 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.
- 1.4 **"Goods"** means all Goods or Services supplied by Customvac 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 **"Equipment"** means all Equipment including any accessories supplied on hire by Customvac to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Customvac to the Customer.
- 1.6 **"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.
- 1.7 **"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 using Customvac's 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 making enquiries via the website.**
- 1.8 **"Price"** means the Price payable (plus any GST where applicable) for the Goods as agreed between Customvac and the Customer in accordance with clause 5 below.
- 1.9 **"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 if the Customer places an order for or accepts delivery of the Goods/Equipment.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Goods/Equipment on credit shall not take effect until the Customer has completed a credit application with Customvac and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods/Equipment request exceeds the Customer's credit limit and/or the account exceeds the payment terms, Customvac reserves the right to refuse Delivery.
- 2.6 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on Customvac's website. If there are any inconsistencies between the two documents, then the terms and conditions contained in this document shall prevail.
- 2.7 Electronic signatures shall be deemed to be 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. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that Customvac 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 Customvac 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 Customvac 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 Customvac; 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 Customvac not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by Customvac as a result of the Customer's failure to comply with this clause.

### 5. Price and Payment

- 5.1 At Customvac's sole discretion the Price shall be either:  
(a) as indicated on any invoice provided by Customvac to the Customer; or  
(b) the Price as at the date of delivery of the Goods/Equipment according to Customvac's current price list; or  
(c) Customvac'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 Customvac reserves the right to change the Price if a variation to Customvac's quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional works required due to unforeseen

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circumstances such as overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed or as a result of any increase to Customvac's in the cost of materials and labour) will be charged for on the basis of Customvac's quotation and will be shown as variations on the invoice. The Customer shall be required to respond to any variation submitted by Customvac within ten (10) working days. Failure to do so will entitle Customvac 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 At Customvac's sole discretion a non-refundable deposit may be required.
- 5.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by Customvac, which may be:
- (a) on delivery of the Goods/Equipment;
  - (b) before delivery of the Goods/Equipment;
  - (c) by way of instalments/progress payments in accordance with Customvac's payment schedule;
  - (d) thirty (30) days following the end of the month in which a statement is delivered to the Customer's address or address for notices;
  - (e) the date specified on any invoice or other form as being the date for payment; or
  - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Customvac.
- 5.5 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 Customer and Customvac.
- 5.6 Customvac may in its discretion allocate any payment received from the Customer towards any invoice that Customvac determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Customvac may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Customvac, payment will be deemed to be allocated in such manner as preserves the maximum value of Customvac's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.
- 5.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Customvac nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Customvac an amount equal to any GST Customvac must pay for any supply by Customvac under this or any other Contract for the sale of the Goods/hire of the Equipment. 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/Equipment

- 6.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods/Equipment at Customvac's address; or
  - (b) Customvac (or Customvac's nominated carrier) delivers the Goods/Equipment to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 At Customvac's sole discretion the cost of delivery is in addition to the Price.
- 6.3 The Customer must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Customvac shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 Customvac may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Any time specified by Customvac for delivery of the Goods/Equipment is an estimate only and Customvac will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods/Equipment to be delivered at the time and place as was arranged between both parties. In the event that Customvac is unable to supply the Goods/Equipment as agreed solely due to any action or inaction of the Customer, then Customvac shall be entitled to charge a reasonable fee for redelivery and/or storage.

### 7. Risk

- 7.1 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.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Customvac is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Customvac is sufficient evidence of Customvac's rights to receive the insurance proceeds without the need for any person dealing with Customvac to make further enquiries.
- 7.3 If the Customer requests Customvac to leave Goods outside Customvac'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.
- 7.4 Where the Customer requests any changes to the specifications of Goods in production then the Customer shall be liable for any costs incurred by Customvac in making those changes and agrees to accept all risk for any subsequent damage.
- 7.5 The Customer agrees to accept vehicles and tyres subject to normal usage, wear and tear resultant from being driven overland from Customvac's factory to the point of delivery to the Customer.

### 8. Used Goods

- 8.1 Where the Customer offers used Goods as a trade in on any purchase of Goods from Customvac the Customer warrants that it is the owner of, and have the right to sell, the used Goods, and that it has clear title to the used Goods, and that the used Goods are free from any lien or other encumbrance.
- 8.2 It is understood and agreed that the total liability of Customvac to the Customer for the used Goods shall not exceed the amount agreed in writing as being the Price which Customvac shall apply against the purchase of new equipment by the Customer.
- 8.3 The Customer shall deliver the used Goods to Customvac in the same condition and appearance as when they were inspected by Customvac or its agents. In the event of a breach of this clause then Customvac shall have the right (at its sole discretion) to either accept or

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- reject the used Goods. If Customvac decides to accept the used Goods, then Customvac reserves the right to amend the Price agreed as per clause 8.2 to reflect the current condition of the used Goods.
- 8.4 In the event of cancellation of the Customer's order for the new equipment or the failure of the Customer to purchase for any other reason, then Customvac reserves the right to either purchase the used Goods, or return the used Goods to the Customer. Purchase of the used Goods shall be at the Price agreed in clause 8.2 less reasonable depreciation for the period between when the used Goods were delivered to Customvac and the date the Customer elects not to purchase the new equipment. If Customvac opts to return the used Goods then the Customer shall reimburse Customvac the costs of any repairs, alterations or improvements made to the used Goods whilst in Customvac's possession and the reasonable costs of return.
- 9. Access**
- 9.1 The Customer shall ensure that Customvac has clear and free access to the work site at all times to enable them to undertake the Services. Customvac 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 Customvac.
- 10. Title To Goods**
- 10.1 Customvac and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Customvac all amounts owing to Customvac; and
  - (b) the Customer has met all of its other obligations to Customvac.
- 10.2 Receipt by Customvac of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 10.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 10.1 that the Customer is only a Bailee of the Goods and must return the Goods to Customvac on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Customvac and must pay to Customvac 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 Customvac and must pay or deliver the proceeds to Customvac 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 Customvac and must sell, dispose of or return the resulting product to Customvac as it so directs.
  - (e) the Customer irrevocably authorises Customvac to enter any premises where Customvac believes the Goods are kept and recover possession of the Goods.
  - (f) Customvac 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 Customvac.
  - (h) Customvac may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 11. Personal Property Securities Act 2009 ("PPSA")**
- 11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Equipment that has previously been supplied and that will be supplied in the future by Customvac to the Customer.
- 11.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Customvac may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, Customvac 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/Equipment charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of Customvac;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of Customvac;
  - (e) immediately advise Customvac of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 11.4 Customvac and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 11.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by Customvac, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Customer must unconditionally ratify any actions taken by Customvac under clauses 11.3 to 11.5.

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- 11.9 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.
- 12. Security and Charge**
- 12.1 In consideration of Customvac agreeing to supply the Goods/Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Customer indemnifies Customvac from and against all Customvac's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Customvac's rights under this clause.
- 12.3 The Customer irrevocably appoints Customvac and each director of Customvac as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf.
- 13. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 13.1 The Customer must inspect the Goods/Equipment on delivery and must within seven (7) days of delivery notify Customvac 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/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Customer must allow Customvac to inspect the Goods/Equipment.
- 13.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 13.3 Customvac acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Customvac makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. Customvac's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5 If the Customer is a consumer within the meaning of the CCA, Customvac's liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6 If Customvac is required to replace the Goods under this clause or the CCA, but is unable to do so, Customvac may refund any money the Customer has paid for the Goods.
- 13.7 If the Customer is not a consumer within the meaning of the CCA, Customvac'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 Customvac at Customvac's sole discretion;
  - (b) limited to any warranty to which Customvac is entitled, if Customvac did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 13.8 Subject to this clause 0, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 13.1; and
  - (b) Customvac has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 13.9 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, Customvac 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/Equipment;
  - (b) the Customer using the Goods/Equipment for any purpose other than that for which they were designed;
  - (c) the Customer continuing the use of the Goods/Equipment 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 Customvac;
  - (e) fair wear and tear, any accident, or act of God.
- 13.10 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 Customvac 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 Customvac 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 13.10.
- 13.11 Customvac may in its absolute discretion accept non-defective Goods for return in which case Customvac may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 13.12 Notwithstanding anything contained in this clause if Customvac is required by a law to accept a return then Customvac will only accept a return on the conditions imposed by that law.
- 14. Default and Consequences of Default**
- 14.1 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 Customvac's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Customer owes Customvac any money the Customer shall indemnify Customvac from and against all costs and disbursements incurred by Customvac in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Customvac's collection agency costs, and bank dishonour fees).
- 14.3 Further to any other rights or remedies Customvac may have under this Contract, if a Customer has made payment to Customvac, 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 Customvac 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.

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- 14.4 Without prejudice to Customvac's other remedies at law Customvac shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Customvac shall, whether or not due for payment, become immediately payable if:
- any money payable to Customvac becomes overdue, or in Customvac's opinion the Customer will be unable to make a payment when it falls due;
  - the Customer has exceeded any applicable credit limit provided by Customvac;
  - 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
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
15. **Cancellation**
- 15.1 Without prejudice to any other remedies Customvac may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Customvac may suspend or terminate the supply of Goods/Equipment to the Customer. Customvac will not be liable to the Customer for any loss or damage the Customer suffers because Customvac has exercised its rights under this clause.
- 15.2 Customvac may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Customer. On giving such notice Customvac shall repay to the Customer any money paid by the Customer for either the Goods or Equipment hire. Customvac 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 the Goods/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Customvac 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-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
16. **Privacy Policy**
- 16.1 All emails, documents, images or other recorded information held or used by Customvac is Personal Information, as defined and referred to in clause 16.3, and therefore considered Confidential Information. Customvac 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"). Customvac acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Customvac that may result in serious harm to the Customer, Customvac 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.
- 16.2 Notwithstanding clause 16.1, privacy limitations will extend to Customvac in respect of Cookies where the Customer utilises Customvac's website to make enquiries. Customvac 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:
- IP address, browser, email client type and other similar details;
  - tracking website usage and traffic; and
  - reports are available to Customvac when Customvac sends an email to the Customer, so Customvac may collect and review that information ("collectively Personal Information")
- If the Customer consents to Customvac's use of Cookies on Customvac's website and later wishes to withdraw that consent, the Customer may manage and control Customvac's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 16.3 The Customer agrees for Customvac 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 Customvac.
- 16.4 The Customer agrees that Customvac may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- to assess an application by the Customer; and/or
  - to notify other credit providers of a default by the Customer; and/or
  - 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
  - to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 16.5 The Customer consents to Customvac being given a consumer credit report to collect overdue payment on commercial credit.
- 16.6 The Customer agrees that personal credit information provided may be used and retained by Customvac for the following purposes (and for other agreed purposes or required by):
- the provision of Goods/Equipment; and/or
  - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or
  - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - enabling the collection of amounts outstanding in relation to the Goods/Equipment.
- 16.7 Customvac may give information about the Customer to a CRB for the following purposes:
- to obtain a consumer credit report;
  - allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 16.8 The information given to the CRB may include:
- Personal Information as outlined in 16.3 above;

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- (b) name of the credit provider and that Customvac 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 Customvac has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of Customvac, 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).
- 16.9 The Customer shall have the right to request (by e-mail) from Customvac:
- (a) a copy of the Personal Information about the Customer retained by Customvac and the right to request that Customvac correct any incorrect Personal Information; and
  - (b) that Customvac does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 16.10 Customvac 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.
- 16.11 The Customer can make a privacy complaint by contacting Customvac via e-mail. Customvac 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).

### 17. Unpaid Seller's Rights

- 17.1 Where the Customer has left any item with Customvac for repair, modification, exchange or for Customvac to perform any other service in relation to the item and Customvac has not received or been tendered the whole of any moneys owing to it by the Customer, Customvac shall have, until all moneys owing to Customvac are paid:
- (a) a lien on the item; and
  - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 17.2 The lien of Customvac shall continue despite the commencement of proceedings, or judgment for any moneys owing to Customvac having been obtained against the Customer.

### 18. Equipment Hire

- 18.1 Equipment shall at all times remain the property of Customvac and is returnable on demand by Customvac. In the event that Equipment is not returned to Customvac in the condition in which it was delivered Customvac retains the right to charge the Customer the full cost of repairing the Equipment. In the event that Equipment is not returned at all Customvac shall have right to charge the Customer the full cost of replacing the Equipment.
- 18.2 The Customer shall:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.
  - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
  - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by Customvac to the Customer.
- 18.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self-insure, Customvac's interest in the Equipment and agrees to indemnify Customvac against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will affect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

### 19. Service of Notices

- 19.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 19.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

### 20. Dispute Resolution

- 20.1 If a dispute arises between the parties to this Contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference, each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

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- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

### 21. Trusts

- 21.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Customvac may have notice of the Trust, the Customer covenants with Customvac 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 Customvac (Customvac 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.

### 22. General

- 22.1 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.
- 22.2 These terms and conditions and any Contract to which they apply shall be governed by the laws of the state in which Customvac has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 22.3 Subject to clause 13 Customvac 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 Customvac of these terms and conditions (alternatively Customvac's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 22.4 Customvac may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 22.5 The Customer cannot licence or assign without the written approval of Customvac.
- 22.6 The Customer agrees that Customvac 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 Customvac to provide Goods/Equipment to the Customer.
- 22.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.8 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.