

Cap Coast Tyres Pty Ltd T/A Capricorn Tyre & Mechanical – Terms & Conditions of Trade

1.	Definitions		party supplier cannot meet the supply demand then any deposit paid will be refunded to the Customer.	(c)	in the event the Customer requests Capricorn to work on a vehicle and leaves the vehicle and/or the keys at Capricorn's premises whilst the site is unattended, then Capricorn shall not be responsible for the security of the vehicle or the keys, and shall not be held liable for any losses, damages or costs whatsoever resulting.
1.1	" Capricorn " means Cap Coast Tyres Pty Ltd T/A Capricorn Tyre & Mechanical, its successors and assigns or any person acting on behalf of and with the authority of Cap Coast Tyres Pty Ltd T/A Capricorn Tyre & Mechanical.	5.3	Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Capricorn, which may be:	8.5	Capricorn will accept no responsibility for valuables or other items left in the Customer's vehicle. It is the Customer's responsibility to remove any valuables from the Customer's vehicle prior to servicing/repair.
1.2	" 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 details (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.		(a) on or before delivery of the Goods;	8.6	Capricorn shall not be liable for the loss of or damage to the Customer's vehicle, its accessories or contents while being repaired or operated in connection with the authorised Services (including in the event of a call-out, it shall be the Customer's responsibility to remain with the vehicle to ensure security of the same), unless caused by the negligence of Capricorn, or Capricorn's employees.
1.3	" 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.	5.4	(b) on completion of the Services;	8.7	It is the Customer's responsibility to ensure that the Customer's vehicle is insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored at Capricorn's premises. The vehicle is at all times stored and repaired at the Customer's sole risk.
1.4	" 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 Capricorn'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.	5.5	(c) for approval of the Customer's thirty (30) days following the end of the month in which a statement is posted to the Customer's address or for notices;	8.8	In the event that the Customer has purchased Goods (including, but not limited to, tyres for race purposes etc) then such Goods are supplied on the understanding that they will be used strictly as per the manufacturer's instructions. The Customer acknowledges and accepts responsibility for the suitability of purpose and Capricorn shall not be responsible for any loss, injury and/or any damages whatsoever to the Goods resulting from the malfunction of such Goods where they are:
1.5	" Customer " means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Capricorn to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:	5.6	(d) the date specified on any invoice or other form as being the date for payment; or	(a)	filled by an unqualified trade person(s);
(a)	if there is more than one Customer, is a reference to each Customer jointly and severally; and		(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 Capricorn.	(b)	in any way adapted to a use to which they are not specifically intended; and
(b)	if the Customer is a partnership, it shall bind each partner jointly and severally; and		Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Capricorn.	(c)	added to or repaired by components not recommended or approved by the manufacturer of the Goods.
(c)	if the Customer is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and	5.7	Capricorn may in its discretion allocate any payment received from the Customer towards any invoice that Capricorn determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Capricorn may allocate any payment previously received and allocated. In the absence of any payment allocation by Capricorn, payment will be deemed to be allocated in such manner as preserves the maximum value of Capricorn's Purchase Money Security Interest (as defined in the PPSA) in the Goods.	8.9	Capricorn shall not be responsible for any loss or damages where the Goods are fitted or used until the review is completed. Failure to make payment may result in Capricorn placing the Customer's account into default and subject to default interest in accordance with clause 16.1.
(d)	includes the Customer's executors, administrators, successors, and permitted assigns.		Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Capricorn an amount equal to any GST Capricorn must pay for any supply by Capricorn under this or any other agreement 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.	(d)	used in conjunction with tubes and/or valves which are not recommended by Capricorn;
1.6	" Goods " means all Goods (including, but not limited to any tyres, wheels, rims, batteries, parts, lubricants consumed during the course of the Services) or Services supplied by Capricorn 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).			(e)	in breach of good practice of any of Capricorn's conditions of use or recommendations;
1.7	" GST " means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (GST).	6.	Additional Charges	(f)	filled with undersized tubes or flaps;
1.8	" Price " means the Price payable (plus any GST where applicable) for the Goods as agreed between Capricorn and the Customer in accordance with clause 5 below.	6.1	Capricorn reserves the right to change the Price:	(g)	damaged in any way after manufacture;
2.	Acceptance		(a) if a variation to the Goods/Services which are to be provided is requested; or	(h)	improperly inflated at any time or used with substitutes of air which is not recommended by Capricorn;
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/Services.		(b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, further faults which are found upon disassembly and/or further inspection) which are only discovered upon commencement of the Services; or	(i)	used for any purpose which is in excess of the ratings marked on the tyre inside walls or specified by Capricorn or the manufacturer;
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.		(c) if during the course of the Services, the Goods are not or cease to be available from Capricorn's third-party suppliers or the acquired part is deemed to not be compliant to complete the repairs, then Capricorn reserves the right to provide alternate/upgraded Goods subject to prior confirmation and agreement of both parties; or	(j)	used for excessive loads or excessive speeds;
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.		(d) in the event of increases to Capricorn in the cost of labour or Goods, or fluctuations in currency exchange rates, which are beyond Capricorn's control.	(k)	altered, reprocessed or repaired in any way whatsoever whether by Capricorn, it's authorised agents or otherwise; and
2.4	The Customer acknowledges and accepts that:		Variations will be charged for on the basis of Capricorn's quotation, and will be detailed in writing, and shown as variations on Capricorn's invoice. The Customer shall be required to respond to any variation submitted by Capricorn within ten (10) working days. Failure to do so will entitle Capricorn 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.	(l)	treated at any time with any sealant for any reason.
(a)	the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Capricorn and it has been approved with a credit limit established for the account. In the event that the supply of Goods requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, Capricorn reserves the right to refuse delivery; and	6.2	Where Capricorn is requested to store the Customer's Goods or vehicle, or where Goods or vehicles are not collected within twenty-four (24) hours of advice to the Customer that they are ready for collection, then Capricorn (at its sole discretion) may charge a reasonable fee for storage.	9.	Testing of vehicles
(b)	in the event that the Customer believes that Capricorn has scratched the vehicle whilst conducting the Services and/or installing the Goods, the Customer shall notify Capricorn of any alleged defect or damage. The Customer shall afford Capricorn an opportunity to inspect the vehicle within a reasonable time following delivery. If the Customer fails to comply with clause (b), the vehicle shall be presumed to be free from any defect or damage.	6.3	For roadside/onsite assistance, a minimum call-out fee shall be applicable, which shall be increased for any after-hours call-outs.	9.1	Capricorn or its employees may test drive or carry out tests on the vehicle at Capricorn's discretion. Capricorn will not be liable for (and the Customer indemnifies Capricorn against) any damages caused to, or by, the vehicle during such tests, collecting or delivery unless it arises from the recklessness or willful misconduct of Capricorn or its employees.
2.5	Where the Goods and/or Services provided by Capricorn are the subject of an insurance claim that the Customer has made, then the Customer shall be responsible for the payment of any monies payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by Capricorn and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.	6.4	All tow and/or salvage fees will be charged to the Customer and will be added to the Price.	10.	Compliance with Laws
2.6	Any advice, recommendation, information or assistance provided by Capricorn in relation to the Goods or Services supplied is given in good faith to the Customer, or the Customer's agent and is based on Capricorn's own knowledge and experience and shall be accepted without liability on the part of Capricorn. Where such advice or recommendations are not acted upon then the Capricorn shall require the Customer or their agent to authorise commencement of the Services in writing. Capricorn shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.	6.5	If Capricorn has been requested by the Customer to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Customer irrespective of whether or not the repair goes ahead.	10.1	The Customer and Capricorn shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods/Services.
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.	6.6	The Customer acknowledges and agrees that Capricorn shall be entitled to:	10.2	Modern Slavery
3.	Errors and Omissions	6.7	(a) retain any components replaced during the provision of the Services; and	10.2	For the purposes of clauses 10.2 to 10.7:
3.1	The Customer acknowledges and accepts that Capricorn shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):	7.	(b) the right to retain all proceeds obtained from the sale of such components to any auto recycler or salvage yard.	(a)	"Act" means the Modern Slavery Act 2018 (sth)
(a)	resulting from an inadvertent mistake made by Capricorn in the formation and/or administration of this Contract; and/or	7.1	Provision of the Services	(b)	"Modern Slavery Statement" and "Reporting Entity" have the meanings given by the Act.
(b)	contained in/omitted from any literature (hard copy and/or electronic) supplied by Capricorn in respect of the Services.	7.1	Delivery ("Delivery") of the Goods is taken to occur at the time that:	10.3	If the Customer is a Reporting Entity, it shall comply with all of its obligations under the Act.
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 willful misconduct of Capricorn; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.	7.2	(a) the Customer or the Customer's nominated carrier takes possession of the Goods at Capricorn's address; or	10.4	Whether the Customer is a Reporting Entity or not, the Customer shall:
3.3	In circumstances where the Customer is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Customer is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not) (" Customer Error "). The Customer must pay for all Goods it orders from Capricorn notwithstanding that such Goods suffer from a Customer Error and notwithstanding that the Customer has not taken or refuses to take delivery of such Goods. Capricorn is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Customer Errors.	7.3	(b) Capricorn (or Capricorn's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.	(a)	use reasonable endeavours to identify, assess and address risks of Modern Slavery practices in its operations and supply chains;
4.	Change in Control	7.4	At Capricorn's sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.	(b)	use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;
4.1	The Customer shall give Capricorn 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 Capricorn as a result of the Customer's failure to comply with this clause.	7.5	The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery.	(c)	use reasonable endeavours to ensure that if at any time the Customer becomes aware of Modern Slavery practices in its operations and supply chains, the Customer must as soon as reasonably practicable take all reasonable steps to address or remove these practices;
5.	Price and Payment	7.6	Any time specified by Capricorn for Delivery of the Goods is an estimate only and Capricorn will not be liable for any loss or damage incurred by the Customer because of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. If Capricorn is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then Capricorn shall be entitled to charge a reasonable fee for redelivery and/or storage.	(d)	submit to Capricorn a copy of any Modern Slavery Statement that it provides under the Act within seven (7) days of so doing; and
5.1	At Capricorn's sole discretion, the Price shall be either:	8.	Where Capricorn is to provide any Services at the Customer's nominated address then the Customer shall be liable for all costs incurred by Capricorn from the time they depart from, and until they return to, their normal place of work (including, but not limited to, mileage and time calculated at Capricorn's standard rates and any Goods purchased for the Services).	(e)	within seven (7) days of Capricorn's request (or such longer period as Capricorn agrees), provide to Capricorn any information or assistance reasonable requested by Capricorn;
(a)	as indicated on any invoice provided by Capricorn to the Customer; or	8.1	The Customer shall ensure that Capricorn has clear and free access to the vehicle and/or site where the vehicle is located at all times to enable them to undertake the Services. Capricorn 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 Capricorn.	(i)	concerning the Customer's compliance with the Act;
(b)	the Price as at the date of Delivery of the Goods according to Capricorn's current price list; or	8.2	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.	(ii)	concerning the Customer's operations and supply chains;
(c)	Capricorn's estimated Price (subject to clause 6) which shall not be deemed binding upon Capricorn as the actual Price can only be determined upon completion of the Services. Capricorn undertakes to keep the Customer informed should the actual Price look likely to exceed the original estimate; and	8.3	If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, Capricorn is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Capricorn is sufficient evidence of Capricorn's rights to receive the insurance proceeds without the need for any person dealing with Capricorn to make further enquiries.	(iii)	to enable Capricorn to prepare a Modern Slavery Statement or otherwise comply with the Act; or
(d)	Capricorn's quoted Price (subject to clause 6.1) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.	8.4	If the Customer requests Capricorn to leave Goods outside Capricorn'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.	(iv)	to enable Capricorn to assess and address risks of Modern Slavery practices in its operations and supply chains.
5.2	At Capricorn's sole discretion, a refundable deposit will be required for special orders and/or non-stockist items. In the event that Capricorn's third-		The Customer acknowledges and accepts that:	10.5	The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and Capricorn will be able to terminate the Contract for any breach by the Customer.
			(a) where Capricorn has performed temporary repairs that Capricorn: (i) offers no guarantee against the recurrence of the initial fault, or any further damage caused; and (ii) will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair required.	10.6	The Customer warrants that any information supplied to Capricorn is true and accurate and may be relied upon for the purposes of the Act.
			(b) Capricorn is only responsible for Goods that are replaced by Capricorn and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the problem, the Customer agrees to indemnify Capricorn against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising; and	10.7	The Customer shall indemnify Capricorn against any loss or liability suffered by Capricorn as a result of the Customer's breach of this clause 10.
				11.	Title
				11.1	Capricorn and the Customer agree that ownership of the Goods shall not pass until:
				(a)	the Customer has paid Capricorn all amounts owing to Capricorn; and
				(b)	the Customer has met all of its other obligations to Capricorn.
				11.2	Receipt by Capricorn 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 Goods passes to the Customer in accordance with clause 11.1:
				(a)	the Customer is only a bailee of the Goods and must return the Goods to Capricorn on request;
				(b)	the Customer holds the benefit of the Customer's insurance of the Goods on trust for Capricorn and must pay to Capricorn 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 Capricorn and must pay or deliver the proceeds to Capricorn on demand;
				(d)	the Customer shall 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 Capricorn and must sell, dispose of or return the resulting product to Capricorn as it so directs;
				(e)	the Customer irrevocably authorises Capricorn to enter any premises where Capricorn believes the Goods are kept and recover possession of the Goods;
				(f)	Capricorn may recover possession of any Goods in transit whether or not Delivery has occurred;
				(g)	the Customer shall not give or grant an encumbrance over the Goods nor shall not otherwise give away any interest in the Goods while they remain the property of Capricorn;

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

Cap Coast Tyres Pty Ltd T/A Capricorn Tyre & Mechanical – Terms & Conditions of Trade

(h)	Capricorn may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.	15.2	The Customer warrants that all designs, specifications, or instructions given to Capricorn will not cause Capricorn to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Capricorn against any action taken by a third party against Capricorn in respect of any such infringement.	(d)	type of consumer credit;
12. Personal Property Securities Act 2009 ("PPSA")				(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);
12.1	In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.	15.3	The Customer agrees that Capricorn may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Capricorn has created for the Customer.	(f)	advance of consumer credit defaults (provided Capricorn is a member of an approved OAC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced; or alternatively that the Customer no longer has any overdue accounts and Capricorn has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
12.2	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 that have previously been supplied and that will be supplied in the future by Capricorn to the Customer, and the proceeds from such Goods.	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 Capricorn's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment. If the Customer owes Capricorn any money, the Customer shall indemnify Capricorn from and against all costs and disbursements:	(g)	information that, in the opinion of Capricorn, the Customer has committed a serious credit infringement;
12.3	The Customer undertakes to:	16.2	(a) incurred; and/or	(h)	advance that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
(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 Capricorn may reasonably require to:	16.3	(b) which would be incurred and/or	16.9	The Customer shall have the right to request (by e-mail) from Capricorn: (a) a copy of the Personal Information about the Customer retained by Capricorn and the right to request that Capricorn correct any incorrect Personal Information; and (b) that Capricorn does not disclose any Personal Information about the Customer for the purpose of direct marketing.
(i)	register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;	16.4	(c) for which by the Customer would be liable;	18.10	Capricorn will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
(ii)	register any other document required to be registered by the PPSA;	16.4	in regard to legal costs on a solicitor and own client basis, internal administration fees, Capricorn's Contract fees (owing for breach of these terms and conditions), including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.	18.11	The Customer can make a privacy complaint by contacting Capricorn via e-mail. Capricorn will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au .
(iii)	correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);	16.4	Further to any other rights or remedies Capricorn may have under this Contract, if a Customer has made payment to Capricorn, 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 Capricorn under this clause 16 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.	19. Unpaid Seller's Rights	
(b)	indemnify, and upon demand reimburse, Capricorn 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;	16.4	Without prejudice to Capricorn's other remedies at law Capricorn shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Capricorn shall, whether or not due for payment, become immediately payable if:	19.1	Where the Customer has left any item with Capricorn for repair, modification, exchange or for Capricorn to perform any other service in relation to the item and Capricorn has not received or been tendered the whole of any monies owing to it by the Customer, Capricorn shall have, until all monies owing to Capricorn 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.
(c)	not register a financing change statement in respect of a security interest without the prior written consent of Capricorn;	16.4	(a) any money payable to Capricorn becomes overdue, or in Capricorn's opinion the Customer will be unable to make a payment when it falls due;	19.2	The lien of Capricorn shall continue despite the commencement of proceedings, or judgment for any monies owing to Capricorn having been obtained against the Customer.
(d)	not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of Capricorn;	16.4	(b) the Customer has exceeded any applicable credit limit provided by Capricorn;	20. Service of Notices	
(e)	immediately advise Capricorn of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales.	16.4	(c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or	20.1	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;
12.4	Capricorn 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.	17. Cancellation	(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.	20.2	(e) if sent by email to the other party's last known email address.
12.5	The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.	17.1	17.1 Without prejudice to any other remedies Capricorn may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Capricorn may suspend or terminate the supply of Goods to the Customer. Capricorn will not be liable to the Customer for any loss or damage the Customer suffers because Capricorn has exercised its rights under this clause.	21. Tru	
12.6	The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.	17.2	17.2 Capricorn may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Capricorn shall repay to the Customer any money paid by the Customer for the Goods. Capricorn shall not be liable for any loss or damage whatsoever arising from such cancellation.	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 Capricorn may have notice of the Trust, the Customer covenants with Capricorn 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 Capricorn (Capricorn 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.
12.7	Unless otherwise agreed to in writing by Capricorn, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.	17.3	17.3 If the Customer cancels Delivery of Goods, the Customer shall be liable for all losses incurred (whether direct or indirect) by Capricorn as a direct result of the cancellation (including, but not limited to, any loss of profits).	22. General	
12.8	The Customer must unconditionally ratify any actions taken by Capricorn under clauses 12.3 to 12.5.	17.4	17.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.	22.1	Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues. 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.
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.	18. Privacy Policy		22.2	These terms and conditions and any Contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts in that state. These terms prevail over all terms and conditions of the other party in writing forming part of the Customer's purchase order.
13. Security and Charge		18.1	18.1 All emails, documents, images, or other recorded information held or used by Capricorn is Personal Information, as defined and referred to in clause 18.4, and therefore considered Confidential Information. Capricorn 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"). Capricorn acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Capricorn that may result in serious harm to the Customer, Capricorn 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.	22.3	Subject to clause 14, Capricorn shall 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 Capricorn of these terms and conditions (alternatively Capricorn's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
13.1	In consideration of Capricorn agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property for the purposes of, including but not limited to registering Capricorn's security interest over the Customer on the PPSA, 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).	18.2	18.2 Notwithstanding clause 18.1, privacy limitations will extend to Capricorn in respect of Cookies where the Customer utilises Capricorn's website to make enquiries. Capricorn agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's: (a) IP address, browser, email client type and other similar details; (b) tracking website usage and traffic; and (c) reports are available to Capricorn when Capricorn sends an email to the Customer, so Capricorn may collect and review that information ("collectively Personal Information")	22.4	Capricorn may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
13.2	The Customer indemnifies Capricorn from and against all Capricorn's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Capricorn's rights under this clause.	18.3	18.3 If the Customer consents to Capricorn's use of Cookies on Capricorn's website and later wishes to withdraw that consent, the Customer may manage and control Capricorn's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.	22.5	The Customer cannot licence or assign without the written approval of Capricorn.
13.3	The Customer irrevocably appoints Capricorn and each director of Capricorn as the Customer's true and lawful attorneys 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 Customer's behalf.	18.4	18.4 The Customer agrees that Capricorn may exchange information about the Customer with those credit providers and with related body corporates for the following purposes: (a) to assess an application by the Customer; and/or (b) to notify other credit providers of a default by the Customer; and/or (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.	22.6	Capricorn 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 Customer agrees and understands that they have no authority to give any instruction to any of Capricorn's sub-contractors without the authority of Capricorn.
14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)		18.5	18.5 The Customer consents to Capricorn being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.	22.8	The Customer agrees that Capricorn 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 Capricorn to provide Goods to the Customer.
14.1	The Customer must inspect the Goods/Services on Delivery and must within: (a) forty-eight (48) hours of the Goods being delivered; and/or (b) any workmanship completed by Capricorn within the earlier of one (1) month of the date of Delivery or 5,000 kilometres (time being of the essence);	18.6	18.6 The Customer agrees that personal credit information provided may be used and retained by Capricorn for the following purposes (and for other agreed purposes or required by): (a) the provision of Goods; and/or (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or (d) enabling the collection of amounts outstanding in relation to the Goods.	22.9	Neither party shall be liable for any default due to any act of God, war, terrorism or other event beyond the control of either party, including natural or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to Capricorn.
(a)	notify Capricorn 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/Services as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Capricorn to inspect the Goods/ Services then Capricorn will either (at Capricorn's sole discretion) replace or remedy the defect.	18.7	18.7 Capricorn may give information about the Customer to a CRB for the following purposes: (a) to obtain a consumer credit report; (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.	22.10	Both parties warrant that they have the power to enter 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.
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).	18.8	18.8 The information given to the CRB may include: (a) Personal Information as outlined in 18.4 above; (b) name of the credit provider and that Capricorn is a current credit provider to the Customer; (c) whether the credit provider is a licensee;	22.11	The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and Delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
14.3	Capricorn acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.				
14.4	Capricorn expressly sets out in these terms and conditions or in respect of the Non-Excluded Guarantees, Capricorn makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Capricorn's liability in respect of these warranties is limited to the fullest extent permitted by law.				
14.5	If the Customer is a consumer within the meaning of the CCA, Capricorn's liability is limited to the extent permitted by section 64A of Schedule 2.				
14.6	If Capricorn is required to replace the Goods under this clause or the CCA, but is unable to do so, Capricorn may refund any money the Customer has paid for the Goods.				
14.7	If the Customer is not a consumer within the meaning of the CCA, Capricorn'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 Capricorn at Capricorn's sole discretion; (b) limited to any warranty to which Capricorn is entitled, if Capricorn did not manufacture the Goods; (c) otherwise negated absolutely.				
14.8	Subject to this clause 14, returns will only be accepted provided that: (a) the Customer has complied with the provisions of clause 14.1; and (b) Capricorn 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.				
14.9	Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, Capricorn shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of: (a) the Customer failing to properly maintain or store any Goods; (b) the Customer using the Goods for any purpose other than that for which they were designed; (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user; (d) the Customer failing to follow any instructions or guidelines provided by Capricorn; (e) fair wear and tear, any accident, or act of God.				
14.10	Notwithstanding anything contained in this clause if Capricorn is required by a law to accept a return, then Capricorn will only accept a return on the conditions imposed by that law.				
14.11	Subject to clause 14.1, customised, or non-stocklist items or Goods ordered to the Customer's specifications are not acceptable for credit or return.				
15. Intellectual Property					
15.1	Where Capricorn has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Capricorn. Under no circumstances may such designs, drawings, and documents be used without the express written approval of Capricorn.				