

TERMS AND CONDITIONS OF TRADE

1. Definitions and Interpretation

1.1 In these Terms and Conditions the following terms shall have the corresponding meaning unless indicated to the contrary:

- **“Administration Charge”** means an additional amount payable on late payment of invoices to reimburse OBE for their internal costs in following, reporting, and otherwise dealing with accounts paid outside their trading terms. The current Administration Charge is \$49.00.
- **“Australian Consumer Law”** means Schedule 2 to the *Competition and Consumer Act 2010 (Cth)* (or any amendment, re-enactment, or revision of that Act).
- **“OBE”** means Onboard Electrical Pty Ltd ABN 83 607 592 996.
- **“Customer”** means the person obtaining the Works from OBE, as specified in any invoice, document or order.
- **“Goods”** means all goods supplied by OBE:
 - to the Customer at the Customer’s request; and
 - necessary and incidental to the provision of Works by OBE, from time to time.
- **“GST”** means goods and services tax as that term is used pursuant to the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (or any amendment, re-enactment, or revision of that Act) at the current rate applicable to items of the nature of each relevant type of Works.
- **“Hourly Charge Out Rate”** means OBE’s standard rate for the provision of Services for a period of one hour, as determined by OBE from time to time. The Hourly Charge Out Rate may be charged on a pro rata basis in such increments as OBE determines according to the nature of the Works. The current Hourly Charge Out Rate as at 3 November 2020 is \$120.00 plus GST.
- **“Intellectual Property”** means all designs, drawings, schematics, layouts, documents, templates, configurations, photographs, video recordings, manuals, instructions, procedures, and other records of like effect created by OBE with respect to Works undertaken or contemplated.
- **“PPSA”** means the *Personal Property Securities Act 2009 (Cth)* (or any amendment, re-enactment, or revision of that Act).
- **“Price”** means the total amount payable for the Goods or Works as agreed by OBE and the Customer in accordance with these Terms and Conditions, including GST where relevant.
- **“Services”** means all services provided by OBE, being any work carried out or to be performed by OBE for and at the request of the Customer from time to time, including but not limited to:
 - All repairs, maintenance, diagnosing, breakdown, improvements, retrofitting, call outs, travel time (where reasonable) and other forms of work including labour and subcontracted services;
 - Supply of all machinery, parts, materials, consumables (including fuel, lubricants, and the like), and equipment;
 - Any expenditure necessary by OBE to conduct the Services which is specific to the nature of the Services provided, or the site, or item on which the Services are provided (such as site fees and inductions); and
 - Where relevant, any charges involved with the delivery of Goods which are not included in the specified cost of the Goods, such as import duties, excises, taxes, and freight.
- **“Works”** means the total Goods and Services provided to the Customer by OBE.

- 1.2 In interpretation of these terms and conditions:
- (a) References to any party includes their executors, administrators, employees, sub-contractors, agents and authorised representatives;
 - (b) If the day on or by which anything is to be done is a Saturday, Sunday, or a public holiday, then it may be done on the next business day;
 - (c) Performance of any obligation is fixed by reference to the capital city of Queensland (Brisbane);
 - (d) Obligations affecting more than one person or party bind them jointly and each of them severally;
 - (e) Capitalisation of words is for convenience only;
 - (f) All references to currency are to the lawful currency of Australia (Australian dollars);
 - (g) The agreement between the parties will be construed according to the laws of the state in which it is created. In the event of dispute between the parties as to the state of creation, where one of the states in contemplation is Queensland, Australia then the agreement shall be construed according to the laws of Queensland; and
 - (h) The parties submit to the non-exclusive jurisdiction of the courts and tribunals of Queensland, Australia.

2. Authorisation, Ownership and Control of Vessel

- 2.1 The Customer acknowledges and agrees that by engaging OBE in relation to Works (actual or proposed):
- (a) It is intending to enter into a contractual agreement with OBE; and
 - (b) It shall observe these terms and conditions accordingly.
- 2.2 The Customer warrants:
- (a) it is either:
 - i) the owner of any vessel upon which the Works are to be carried out; or
 - ii) an authorised agent of each relevant vessel's owner, with authority to obtain Works;
 - (b) where it is the authorised agent of a vessel's owner, its authority is not subject to any constraint (including as to Price) unless the full terms of any constraint have been communicated to OBE and acknowledged as received by OBE, both in writing, prior to the acceptance of any order for Works by OBE;
 - (c) it has obtained all necessary authorisations from all relevant parties to contract with OBE for the Works;
 - (d) it is not bankrupt or insolvent (as relevant); and
 - (e) it is not prohibited at law or under any agreement from entering into an agreement to obtain the Works.
- 2.3 Where the Customer is a corporation, it will give OBE at least seven days prior written notice of any proposed change of ownership or control of the Customer.
- 2.4 The Customer agrees to promptly communicate to OBE any relevant change in the Customer's or vessel's details, including but not limited to address and contact information, and vessel ownership, registration, control, or location.
- 2.5 Failure to comply with this clause may result in the Customer being liable to OBE for any subsequent loss or damage incurred by OBE.

3. Payment conditions

- 3.1 The Customer accepts a minimum call out fee equal to one hour of Hourly Charge Out Rate will be charged for all work, including inspection of a vessel for the purpose of providing a quotation for estimated Works, unless OBE has expressly waived this fee in

- writing prior to the inspection. Reasonable travel expenses may be additionally charged to the Customer at the discretion of OBE.
- 3.2 OBE reserves the right to charge a customer for a fair and reasonable amount of remote technical advice and support (for example, over the phone or by email). The Price charged will be calculated at the Hourly Charge Out Rate.
 - 3.3 The Price will be the amount stated on the invoice, reasonable errors and omissions excepted.
 - 3.4 Any Price quotation, unless expressly stated to be fixed, is an estimate only based on the apparent scope of the Works reasonably apparent at the time of quoting. OBE expressly reserves the right to revise any quotation, at any time, based on reasonably unforeseen factors or complications in the Works. In such cases, OBE will endeavour to seek acceptance of any further Works required unless the Works are of a necessary character to avoid damage or injury to any person or object, or are required by law.
 - 3.5 Any quotation is only valid for the time stated on it as such. If no time period is specified on the quotation, the valid time is 30 days from the date of the quotation.
 - 3.6 OBE reserves the right to make changes to the Price where:
 - (a) a variation to the quotation is requested by the Customer (or the vessel owner, where the Customer is not the vessel owner); or
 - (b) the Works originally quoted are required to be substituted for other Works, for any reason, which are of a different Price.
 - 3.6 Payment for Goods must be made at the time of placing an order, unless otherwise agreed in writing. OBE may require a partial deposit, or payment for the full cost, of Goods at its election.
 - 3.7 Time for payment for the balance costs of Works will be upon practical completion, with payment due immediately upon receipt of an invoice from OBE, as otherwise specified on the invoice, or otherwise agreed in writing.
 - 3.8 Payments which exceeds OBE's trading terms stated on the invoice (or, if no period is stated – 30 days) incur an additional Administration Charge.
 - 3.9 Payment of a deposit against the cost of the Works is required prior to commencement at the discretion of OBE, including but not limited to circumstances where:
 - (a) Total Price of the Works is estimated to be more than \$1000.00; or
 - (b) Works are estimated to exceed seven days' duration from date of commencement.
 - 3.10 For Works estimated to take longer than seven days to complete from date of commencement, OBE reserves the right to issue progress invoices for Works completed at reasonable intervals.
 - 3.11 Where a required deposit or progress invoice is unpaid OBE reserves the right to cease work until payment (or satisfactory arrangement in OBE's sole discretion for surety of payment) is made. In such an event, any agreed or required time period for the commencement or completion of the Works is automatically extended by the time taken in satisfactory resolution of the outstanding payment.
 - 3.12 If OBE is unable to complete or continue any part of the Works, or is delayed in providing the Work, due to any circumstance beyond its reasonable control, then it shall not be liable for the delay and may issue a progress invoice for Works completed up to the relevant point at which the Works are ceased or delayed. Cessation or delay may arise where, for example:
 - (a) Where Works are required to be completed by a third party before OBE can continue;
 - (b) In the event there is a hold up of any Goods required for the continuation or completion of Works, regardless of their source or method of provision; or
 - (c) Where any necessary authority required for OBE to access and provide the Works is revoked or constrained to a material extent.
 - 3.13 Payment may be made by:

- (a) Electronic funds transfer / online banking;
- (b) Bank cheque;
- (c) Credit card - credit card payments will incur a surcharge fee at the rate of:
 - i) 1.75% for Australian issued credit cards; and
 - ii) 2.9% for other cards; or
- (d) By any other method agreed by the Customer and OBE.

4. Acceptance

- 4.1 The Customer accepts and agrees to these terms and conditions where the Customer, verbally or in writing:
- (a) places an order for any Goods;
 - (b) requests the provision of any Works (including inspection, or call out);
 - (c) accepts any Goods,
 - (d) requests a quote;
 - (e) accepts a quote;
 - (f) pays any deposit or part payment for Goods or Works;
 - (g) provides access to OBE to a vessel in connection with anticipated Works;
 - (h) allows commencement of Works; or
 - (i) acts in any other manner which OBE reasonably interprets as constituting an intention for OBE to provide Works at the request of the Customer.
- 4.2 These terms and conditions may only be amended with OBE's consent in writing and will prevail to the extent of any inconsistency with any other document or agreement between the Customer and OBE.

5. Default and Consequences of Default

- 5.1 Without prejudice to any other remedies OBE may have under these terms and conditions or at law, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions then OBE may suspend or terminate the supply of any Works to the Customer.
- 5.2 Without prejudice to OBE's other remedies at law, OBE will be entitled to cancel all or any part of any order of the Customer which remains unfulfilled where:
- (a) The Customer is in breach of any obligation under these terms and conditions, and fails to rectify that breach within a reasonable time of OBE bringing the breach to the Customer's attention (including by suspending or terminating supply of Works);
 - (b) The Customer dies;
 - (c) Any money payable to OBE becomes overdue;
 - (d) In the reasonable opinion of OBE, the Customer will be unable to make a required payment when it falls due;
 - (e) The Customer stops or reverses payment on any amount required to be paid for the Works;
 - (f) The Customer becomes insolvent, convenes a meeting with its creditors, proposes or enters into an arrangement with creditors, or makes the assignment for the benefit of its creditors;
 - (g) A liquidator is appointed to the Customer; or
 - (h) A receiver, manager, or similar person is appointed in respect of the Customer for any asset of the Customer which is directly relevant to the provision of the Works.
- In the event of such cancellation, all amounts owing to OBE for the Works become due and payable immediately.
- 5.3 Interest on overdue amounts will accrue from the date when any relevant amount becomes due and payable until the date of receipt of payment in cleared funds, at a rate of 10% per annum (accrued daily and capitalised monthly).

- 5.4 At its election OBE may take any action it deems necessary or expedient to recover any outstanding amount which is overdue for payment. The Customer agrees to indemnify and hold harmless OBE for all costs and disbursements reasonably incurred by OBE in taking any such action, including but not limited to:
- (a) Internal and administration costs;
 - (b) Legal costs (on a solicitor and own client basis);
 - (c) Collection agency fees (including commission); and
 - (d) Disbursements and expenses, including debtor tracing and skip fees.

6. Lien

- 6.1 While any amount of the Price remains unpaid, or having been paid is subsequently dishonoured without rectification, the Customer acknowledges and agrees that OBE may exercise a lien on any Goods, and any vessel upon which Works have been conducted.
- 6.2 OBE reserves the right to exercise any lien until such time as:
- (a) Sufficient payment is made to OBE in cleared funds;
 - (b) Sufficient security for payment is provided to OBE upon such terms as OBE may decide at their sole discretion; or
 - (c) An order to deal with the property under the lien is made by a court of competent jurisdiction.

7. Disposal of Uncollected Goods

- 7.1 This clause applies regardless of whether a lien has been placed over any Goods or vessel upon which Works have been conducted.
- 7.2 The Customer acknowledges and agrees OBE may exercise its rights to dispose of uncollected goods under the *Disposal of Uncollected Goods Act 1967 (Qld)* in accordance with the required terms of the Act.
- 7.3 For the purposes of the *Disposal of Uncollected Goods Act* the Customer's attention is drawn to the notice displayed at OBE's business premises stating: "*The Disposal of Uncollected Goods Act 1967 covers inspection, storage, repair and other treatment of goods. Under this Act, uncollected goods may be sold six months after the date on which they were ready for collection.*"
- 7.4 At any time on and following the date on which the Goods or vessel are ready for re-delivery to the Customer, OBE may give notice to the Customer (sent to such current contact details as provided to OBE by the Customer from time to time, as relevant) in the form required by the Act giving notice of OBE's intention to sell the relevant items unless:
- (a) the outstanding Price is paid; and the Customer either
 - (b) takes delivery of the items; or
 - (c) gives valid directions for the items' delivery.

8. Grant of Access and Liability

- 8.1 The Customer must ensure the safe and clear access to site of any Works (including any vessel) at all times to enable OBE to undertake the Works.
- 8.2 Except to the extent:
- (a) expressly required by law; or
 - (b) directly due to the negligent act or omission by OBE,
- the Customer shall indemnify and hold harmless OBE against any direct loss, damage or cost with respect to the vessel, worksite, persons, property or surrounding areas.
- 8.3 Except to the extent expressly required by law, the Customer shall indemnify and hold harmless OBE against any indirect loss, damage or cost with respect to the vessel, worksite, persons, property or surrounding areas.

- 8.4 Except where prohibited by law, the extent of OBE's liability to the Customer shall not exceed the Price.
- 8.5 The Customer acknowledges that any equipment or personal property left at the premises of OBE, vessel or worksite, is left at the sole risk of the Customer.
- 8.6 The Customer should ensure that all insurance policies in respect of the vessel and any of the Customer's (or vessel owner's, as relevant) equipment and personal property are up to date and adequate.

9. Delivery of Goods and passing of risk

- 9.1 Delivery of Goods ('delivery') will occur at the time the Customer (or Customer's nominated carrier) takes possession of the Goods either:
 - (a) at the place of business of OBE;
 - (b) upon physical receipt by the Customer, their nominated carrier, or third party recipient; or
 - (c) upon delivery of the Goods to the address nominated for delivery by the Customer, even if the Customer is not present at the address.
- 9.2 OBE may charge a fee for delivery of any goods which are not collected from OBE's place of business.
- 9.3 Any insurance costs for the Goods (including during transport) will be paid for by the Customer and due in full on the date of payment of the invoice for the Goods. The Customer shall provide such reasonable assistance as is necessary to allow the placing on any requisite insurance. In the event any such insurance is not able to be placed, including by reason of delay or omission by the Customer, the Customer acknowledges that all risk for the Goods remains with them.
- 9.4 Any carrier nominated to receive the Goods on behalf of the Customer shall be deemed to be the Customer's agent, regardless of whether OBE books the carrier's services.
- 9.5 OBE cannot guarantee delivery dates and any date provided is deemed to be an estimate only.
- 9.6 All risk for damage to or loss of the Goods passes to the Customer on delivery.
- 9.7 The Customer must accept delivery of the Goods even if they are delivered late.
- 9.8 OBE will not accept liability for any loss or damage incurred by the Customer as a result of any delayed or late delivery.
- 9.9 In the event that the Goods are lost, damaged or destroyed prior to ownership passing to the Customer, OBE remains entitled to full payment of the Price relevant to the Goods. For this purpose:
 - (a) OBE is entitled to priority payment of insurance proceeds until the full amount payable for the Goods is received;
 - (b) The Customer specifically agrees to subrogate its rights in the insurance proceeds to OBE for the purposes of (a); and
 - (c) The production of these terms and conditions by OBE is sufficient evidence of OBE's rights to receive the insurance proceeds, without the need for any person dealing with OBE to make further inquiries.
- 9.10 Goods delivered to any unattended location at the request of the Customer will be left at the sole risk of the Customer.

10. Customer waiver and acknowledgement

- 10.1 The Customer acknowledges and agrees it is responsible for undertaking its own independent research in relation to the purchase of any Goods and makes any purchases based solely upon the reliance of its own skill and judgment. In particular, the Customer accepts responsibility to ensure any Goods selected are:
 - (a) Fit for the Customer's particular use beyond the Goods' specific and reasonably general uses represented by the manufacturer; and

- (b) Compatible with the Customer's existing configuration, equipment, and systems (including software, hardware, and mechanical).
- 10.2 Unless specifically agreed in writing by OBE as part of the Works provided, any recommendation of Goods (including as to type, model, specification, suitability, and cost) shall not be considered a guarantee, representation or warranty by OBE that the Goods shall:
- (a) be fit for any particular purpose other than as strictly represented by the manufacturer;
 - (b) perform in any manner other than as strictly represented by the manufacturer; or
 - (c) be compatible or work with any of the Customer's other items or systems, or any other Goods.
- 10.3 The Customer waives its right to do any of the following as a result of the Customer's reliance on any innocent or inadvertent misrepresentation made by OBE:
- (a) Rescind, or otherwise cancel the Customer's contract with OBE;
 - (b) Sue for damages, loss or cost; or
 - (c) Claim restitution or compensation,
- to the extent that any of the above are attributable to such misrepresentation.
- 10.4 OBE does not accept responsibility for any term, condition, representation or warranty other than:
- (a) Where relevant, those given by the consumer guarantees under the Australian Consumer Law. Any such consumer guarantee is personal to the Customer and may not be assigned or transferred to any third party; and
 - (b) The warranty given by the manufacturer.
- 10.5 Where the Works require any Goods which are:
- (a) Specifically manufactured to the Customer's specification; or
 - (b) Purchased directly from an overseas supplier,
- then the Customer acknowledges and agrees that OBE is acting as a limited agent on behalf of the Customer in the purchase of the Good, and that accordingly any rights attributable to the Customer as a consumer under the Australian Consumer Law are exercisable by the Customer directly against such third party supplier and not against OBE.

11. Title and ownership of Goods

- 11.1 Ownership of the Goods passes when
- (a) All amounts owing to OBE have been paid in full in cleared funds; and
 - (b) All other obligations owing to OBE have been met by the Customer.
- 11.2 If OBE releases the Goods to the Customer prior to payment, the Customer agrees:
- (a) it is only a bailee of the Goods pending payment; and
 - (b) while payment remains outstanding, it will return the Goods to OBE upon OBE's request.
- 11.3 The Customer is not permitted to sell, dispose or otherwise part with possession of the Goods other than:
- (a) in the ordinary course of business;
 - (b) for full market value; and
 - (c) with the express prior written consent of OBE.
- Any such consent given by OBE is given on the express condition that the Customer must hold the proceeds for immediate payment to OBE on demand.
- 11.4 The Customer is not permitted to convert or process the Goods or intermix them with other Goods without the express prior consent of OBE. If the Customer does so (whether with consent or otherwise), then the Customer holds the resulting product on trust for the benefit of OBE and must sell, dispose of or return the resulting product to OBE as it so directs.

- 11.5 For the purposes of reasonably inspecting, or asserting any of OBE's rights to gain possession or control of any Goods, the Customer:
- (a) irrevocably authorises OBE to enter any premises under the Customer's possession or control; and
 - (b) agrees to perform all necessary acts, and provide all reasonable assurances (including the payment of any amount as surety or bond), as necessary to gain access for OBE to any premises which are not under the Customer's possession or control,
- with respect to any premises at which the subject Goods are located, or reasonably suspected of being located.
- 11.6 OBE may recover possession or control of any Goods in transit whether or not delivery has occurred.
- 11.7 The Customer may 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 OBE without OBE's express prior written consent.
- 11.8 OBE may commence proceedings to recover the Price even if the ownership of the Goods has not passed to the Customer by reason of the operation of this clause.

12. Security Interest

- 12.1 For the purposes of this clause:
- (a) Words used have the same meaning as set out in the PPSA;
 - (b) OBE is the secured party;
 - (c) The Customer is the grantor;
 - (d) The Works is the collateral; and
 - (e) The outstanding balance of the Price together with all other amounts payable by the Customer to OBE is the secured money.
- 12.2 The Customer acknowledges and agrees that:
- (a) OBE's accepted quote;
 - (b) OBE's invoice; and
 - (c) these terms and conditions,
- constitute a security agreement for the purposes of the PPSA, and creates a security interest to secure the due and punctual payment of the secured money over all Works that have been supplied and are to be supplied as part of the agreement.
- 12.3 The parties agree that the secured party's interest is a purchase money security interest.
- 12.4 The grantor undertakes, at its own cost:
- (a) to promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the secured party 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
 - (b) to correct any defect in a statement referred to in sub-clause (a)(i) or (ii);
 - (c) to indemnify, and upon demand reimburse, the secured party for all reasonable expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA, enforcing its security interest, or releasing any collateral charged thereby;
 - (d) not to register a financing change statement in respect of a security interest without the prior written consent of the secured party;
 - (e) not to register, or permit to be registered, a financing statement or a financing change statement in relation to the collateral in favour of a third party without the prior written consent of the secured party; and

- (f) to do all things reasonably necessary to perfect the secured party's interest in any part of the collateral.
- 12.5 For the purposes of the PPSA, to the extent permissible by law:
- (a) The secured party need not comply with sections 95, 96, 118, 121(4), 125, 130, 132, 135, 137, and 157 insofar as they relate to the grantor;
 - (b) If the PPSA is amended after the date the security agreement comes into existence to permit the secured party to avoid or exclude the operation of other provisions of the PPSA, the secured party may so avoid or exclude such operation by giving prior written notice to the grantor; and
 - (c) The grantor waives its rights to receive notices from the secured party before the secured party may exercise any of its rights or powers under the security agreement or in respect to the collateral.
- For clarification, subject to amendment of the PPSA and sub-clause (b) above, these exclusions do not apply where the collateral is used predominantly for personal, domestic or household purposes.
- 12.6 The giving of a notice by the secured party in any instance shall not be construed as a waiver of any agreement by the parties under this clause for any other instance.
- 12.7 For the purposes of complying with this clause the grantor irrevocably appoints the secured party as its attorney to sign such documents and do such acts as may be required for the secured party to perfect its interest, take possession of the collateral, or sell the collateral.

13. Guarantees, Warranties and returns

- 13.1 Where any Works are provided to a consumer end-user, the following applies:
- (a) OBE's Goods and Services come with guarantees which cannot be excluded under the Australian Consumer Law;
 - (b) The Customer is entitled to a replacement or refund for a major failure, and compensation for any other reasonably foreseeable loss or damage;
 - (c) The Customer is entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure;
 - (d) A 'major failure' is one in which the Goods:
 - i) Has a problem which would have caused a reasonable person who knew about the problem not to buy the Goods;
 - ii) Is significantly different from the description given, sample provided, or demonstration model;
 - iii) Is substantially unfit for its usual purpose, and it cannot be fixed within a reasonable time;
 - iv) Is unfit for a particular purpose which the Customer informed OBE of before the Goods were ordered or bought, and it cannot be fixed within a reasonable time; or
 - v) Is unsafe or dangerous when reasonably used in accordance with any and all relevant safety instructions and requirements.
- 13.2 In any circumstance where the Customer is entitled to a replacement and OBE is reasonably unable to provide a replacement (including within a reasonable time) then OBE may inform the Customer accordingly, and in which case the Customer will be entitled to either a refund or repair of the relevant Goods at their election.
- 13.3 The consumer guarantees do not apply in the following circumstances:
- (a) The Works are supplied in accordance with the Customer's request and specification, but the Customer:
 - i) changed their mind;
 - ii) found a cheaper price;
 - iii) found an item which they would prefer;
 - iv) does not like the outcome; or

- v) has no use for them;
 - (b) The Works are misused in any way that causes the problem;
 - (c) To Goods which are acquired to be used, in trade or commerce, in the manufacture, production, or repair of something else;
 - (d) In respect to any particular fault, defect, or problem of the Goods, the Customer was made aware of the fault, defect, or problem before agreeing to buy the Goods;
 - (e) Works are requested to be done in a certain way against the advice of OBE; and
 - (f) Works are conducted in a manner which the Customer did not intend, so long as OBE has conducted itself reasonably in accordance with the instructions received.
- 13.4 It is the responsibility of the Customer to inspect:
- (a) all Goods upon receipt; and
 - (b) all Works upon completion,
- and promptly notify OBE of any apparent faults, defects, or issues.
- 13.5 Notification of any evident faults, defects, or issues must be made within, as relevant:
- (a) a reasonable time of supply in respect to Goods; or
 - (b) seven days of completion of Services.
- Such notification must be:
- (c) in writing;
 - (d) describe the fault, defect, or issue with sufficient detail so that OBE may be reasonably informed of the nature of the notification;
 - (e) identify any Goods reasonably forming part of the fault, defect, or issue; and
 - (f) where relevant nominate quantities of Goods.
- 13.6 Subject to this clause, returns will only be accepted provided that:
- (a) The Customer has notified OBE in writing of any defect within a reasonable time of supply according to the type of Goods; and
 - (b) OBE reasonably agrees the Goods are defective; and
 - (c) the Goods are returned to OBE within a reasonable time of notification of defect at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in the same condition in which they were supplied, fair wear and tear excepted.
- 13.7 OBE will not be liable for any defect or damage which may be caused, result from, or be significantly contributed to, as a result of:
- (a) the Customer failing to properly use, maintain or store any Goods (including the use of unsuitable consumables);
 - (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 becoming aware of any defect, or in circumstances where a reasonable person using the Goods in the prudent manner would reasonably become aware of the defect;
 - (d) the Customer failing to follow any instructions or guidelines provided by OBE or the manufacturer; or
 - (e) fair wear and tear, accident, negligence, or act of God.
- 13.8 Where OBE is obligated or agrees to repair any Works which are defective:
- (a) The Customer must allow OBE sufficient opportunity to carry out any repair work within a reasonable time. For this purpose, OBE may contract a third party to carry out any repairs on its behalf; and
 - (b) If:
 - i) OBE refuses to undertake the repairs; or
 - ii) Is unable to undertake the repairs within a reasonable timeframe,
 then the Customer may:

- iii) Take the Goods elsewhere to be repaired and ask OBE to pay the reasonable costs of repair and delivery;
- iv) Reject the Goods and request a refund; or
- v) Reject the Goods and ask for a replacement (subject to one being reasonably available).

13.9 OBE disclaims all liability for Goods beyond those required by law.

13.10 Where the Customer is not covered by the Australian Consumer Law, OBE's liability for any defect or damage in the Works is:

- (a) In respect to Goods, limited to the value of any express warranty provided by the manufacturer;
- (b) In respect to Services, limited to the extent of any express warranty agreed to by OBE; and
- (c) Otherwise disclaimed.

14. Intellectual Property

14.1 The Customer acknowledges and agrees that ownership in all Intellectual Property remains the property of OBE at all times.

14.2 The Customer warrants that all information given to OBE for the purposes of creating or using any Intellectual Property:

- (a) is the sole property of the Customer; or
- (b) is given by the Customer with absolute authority to communicate it to OBE for their use in the creation of Intellectual Property; and
- (c) will not cause OBE to infringe any rights of any third party (intellectual property or otherwise).

14.3 The Customer indemnifies and holds harmless OBE against any claim, loss, damage or action taken by a third party in respect of an infringement of any claimed or perceived rights in connection with the Intellectual Property.

15. Privacy

15.1 This clause only applies where OBE has been requested to extend credit to the Customer for a period in excess of seven days. It applies during any period during which OBE:

- (a) Is assessing the request to extend credit to the Customer; and
- (b) Following any decision by OBE to grant any such credit.

15.2 OBE may seek credit information from a credit reporting body under the *Privacy Act 1988 (Cth)* pertaining to the Customer and its officers (where the Customer is a corporation) as part of establishing and maintaining this agreement. Specifically, the Customer authorises OBE to obtain a credit report from a credit reporting body containing personal and business credit information about it and, where relevant, its officers (for which purpose it shall provide reasonable assistance in procuring any further consents necessarily required).

15.3 The Customer agrees to OBE obtaining information about it from other credit providers, whose names it may have provided to OBE or that may be named in a credit report, for the purpose of assessing and maintaining the agreement.

15.4 The Customer agrees OBE may obtain a credit report from a CRB for the purpose of collecting overdue payment relating to consumer or commercial credit (as relevant) owed by the Customer to OBE.

15.5 OBE may give information to a credit reporting body concerning details it holds about the Customer including credit default information or that the Customer has committed a serious credit infringement.

15.6 OBE may provide information to a credit reporting body before, during, and after credit provision. This information is limited to:

- (a) Identifying particulars, including name, sex, current and past two addresses, date of birth, employer and government issued identification number (e.g. driver's licence);
- (b) That the Customer has applied for consumer or commercial credit (as relevant) with OBE;
- (c) That OBE is a current credit provider to the Customer;
- (d) Payment defaults which are more than 60 days overdue, and for which debt collection has commenced;
- (e) That defaults listed under (d) have been rectified;
- (f) That the Customer has committed a serious credit infringement in OBE's opinion;
- (g) Dishonoured cheques (above the legislated amount) which have been dishonoured at least twice; and
- (h) Where allowed, repayment history (repayment due date, whether it is outstanding and the day on which it is made).

15.7 The Customer authorises OBE to use its personal and credit information to:

- (a) Give information to a credit reporting body in accordance with the limited nature of information covered in the preceding sub-clause;
- (b) Obtain information about the Customer from a credit reporting body or other credit provider;
- (c) Determine the Customer's credit worthiness;
- (d) Collect overdue payments from the Customer;
- (e) Report a serious credit infringement;
- (f) Inform other credit providers about the Customer's application for credit and any matters concerning items (d) to (h) in the preceding sub-clause;
- (g) Disclose information to a dispute resolution provider to settle a dispute about your credit;
- (h) Disclose information about your credit to a potential assignee of the credit;
- (i) Inform a debt collector to take action to recover outstanding payments;
- (j) Disclose information to a related corporation; and
- (k) Disclose information to a representative for the purpose of managing your credit.

15.8 The Customer has the following rights with respect to its personal credit information:

- (a) Obtain from OBE their policy about management of credit related personal information;
- (b) Obtain from the credit reporting body their policy about management of credit related personal information;
- (c) Access the Customer's information from OBE (OBE may not charge for requesting access, but may implement a charge for providing access);
- (d) Request that any inaccurate, out-of-date, incomplete, irrelevant or misleading information be corrected;
- (e) Request the credit reporting body not to use the information for pre-screening of direct marketing by a credit provider;
- (f) Request the credit reporting body not to use or disclose the information if the Customer has reason to believe it is, or is likely to be, a victim of fraud; and
- (g) Make a complaint to OBE if the Customer believes there is a breach of the Privacy Act or the *Credit Reporting Privacy Code*.

15.9 OBE's Statement of Notifiable Matters for the purposes of section 21C of the Privacy Act is:

- (a) OBE collects information about the Customer from:
 - i) The Customer;
 - ii) Credit reporting bodies; and
 - iii) The Customer's references, where given;
- (b) Collection of information is required and authorised by the Privacy Act;

- (c) If the relevant information is not collected, OBE may decline to provide credit to the Customer;
- (d) The Customer's information may be provided to:
 - i) The Customer, and the Customer's duly authorised representatives;
 - ii) Credit reporting bodies;
 - iii) Government agencies, when lawfully required;
 - iv) Courts and tribunals, for the purposes of collection and when ordered to do so;
 - v) Law enforcement agencies, when lawfully required; and
 - vi) OBE's representatives (such as for the purposes of account maintenance, and debt collection);
- (e) OBE's Privacy Policy and Credit Information Access and Correction Policy contains information on how to access the information held about the Customer, and how to seek correction if it is incorrect;
- (f) OBE's policies contain information about how to complain if OBE breaches the Australian Privacy Principles or the Credit Reporting Privacy Code. The complaint will first be dealt with through OBE's internal dispute resolution scheme, and a written response to the complaint will be provided within 30 days. If the dispute is not satisfactorily resolved, the complaint may be referred to the Australian Information Commissioner; and
- (g) Copies of OBE's policies can be obtained by contacting OBE and requesting their provision.

15.10 In this clause, a 'credit reporting body' is a reference to any of the following:

- (a) illion (www.illion.com.au) – phone 13 23 33
- (b) Equifax (www.equifax.com.au) – phone 13 83 32
- (c) Experian (www.experian.com.au) – phone 1300 783 684

16. General

- 16.1 The failure by OBE to enforce any provision of these terms and conditions will not constitute a waiver of that provision, nor will it affect the rights of OBE to subsequently enforce that provision.
- 16.2 If any provision of these terms and conditions are deemed to be invalid, void, illegal or unenforceable, then:
- (a) That provision shall be read down to the extent necessary to remedy the relevant issue; or
 - (b) If the provision is not capable of reading down to the extent necessary, the offending provision shall be severed and the balance of terms shall continue to remain in effect if the agreement is capable of continuing with that provision severed.
- 16.3 The Customer acknowledges and agrees it may not:
- (a) set-off;
 - (b) deduct; or
 - (c) withhold payment of,
- any sum from the Price without the express prior written consent of OBE.
- 16.4 The Customer acknowledges and agrees OBE may license or sub-contract all or any part of its rights and obligations under the agreement, specifically including the carrying out of any of the Works, without the Customer's consent.
- 16.5 These terms and conditions are subject to change by OBE at any time and any such changes will take effect from the date on which OBE notifies the Customer of the Change. OBE shall endeavour to provide reasonable notice of any change to these terms and conditions to the Customer, where relevant, during the course of any Works being conducted.

- 16.6 The parties acknowledge and agree that each purchase of Works from OBE constitutes a separate agreement unless otherwise specified in these terms and conditions.
- 16.7 Neither party will be liable for any default or delay which is reasonably due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, pandemic, or other event beyond the reasonable control of the party who is required to perform the obligation in question.