

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 “MPSL” means Marine Power Systems Limited, its successors and assigns or any person acting on behalf of and with the authority of Marine Power Systems Limited.
- 1.3 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting MPSL to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 “Goods” means all Goods or Services supplied by MPSL to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 “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.
- 1.6 “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 Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.7 “Price” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between MPSL and the Client in accordance with clause 5 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 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 Any advice, recommendation, information, assistance or service provided by MPSL in relation to Goods or Services supplied is given in good faith, is based on MPSL’s own knowledge and experience and shall be accepted without liability on the part of MPSL and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.
- 2.5 In the event that MPSL is required to provide the Services urgently which may require MPSL’s staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then MPSL reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between MPSL and the Client.
- 2.6 The Client acknowledges and accepts that:
- (a) the supply of Goods on credit shall not take effect until the Client has completed a credit application with MPSL and it has been approved with a credit limit established for the account;
 - (b) in the event that the supply of Goods request exceeds the Client’s credit limit and/or the account exceeds the payment terms, the Client reserves the right to refuse delivery and/or request an alternative payment method; and
 - (c) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, MPSL reserves the right to vary the Price with alternative Goods as per clause 5.2, subject to prior confirmation and agreement of both parties. MPSL also reserves the right to halt all Services until such time as MPSL and the Client agree to such changes. MPSL shall not be liable to the Client for any loss or damage the Client suffers due to MPSL exercising its rights under this clause.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that MPSL 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 MPSL 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 MPSL 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 MPSL; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

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

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5. Price and Payment

- 5.1 At MPSTL's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by MPSTL to the Client; or
 - (b) MPSTL 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 MPSTL reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) if during the course of the Services, the Goods are not or cease to be available from MPSTL's third party suppliers, then MPSTL reserves the right to provide alternative Goods; or
 - (d) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to any difficulties with obscured or other defect found on closer inspection, misdiagnosis in the first instance, accessing replacement parts for the Services, the transportation of the Goods the Client, etc.), which are only discovered on commencement of the Services; or
 - (e) in the event of increases to MPSTL in the cost of labour or materials which are beyond MPSTL's control.
- 5.3 Variations will be charged for on the basis of MPSTL's quotation, and will be detailed in writing, and shown as variations on MPSTL's invoice. The Client shall be required to respond to any variation submitted by MPSTL within ten (10) working days. Failure to do so will entitle MPSTL 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.
- 5.4 At MPSTL's sole discretion a non-refundable deposit may be required.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by MPSTL, which may be:
- (a) on delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with MPSTL's payment schedule;
 - (c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by MPSTL.
- 5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and MPSTL.
- 5.7 MPSTL may in its discretion allocate any payment received from the Client towards any invoice that MPSTL determines and may do so at the time of receipt or at any time afterwards. On any default by the Client MPSTL may re-allocate any payments previously received and allocated. In the absence of any payment allocation by MPSTL, payment will be deemed to be allocated in such manner as preserves the maximum value of MPSTL's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by MPSTL nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to MPSTL an amount equal to any GST MPSTL must pay for any supply by MPSTL under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery of Goods

- 6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at MPSTL's address; or
 - (b) MPSTL (or MPSTL's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 At MPSTL's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 6.3 MPSTL may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.4 Any time specified by MPSTL for delivery of the Goods is an estimate only and MPSTL will not be liable for any loss or damage incurred by the Client as a result 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. In the event that MPSTL is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then MPSTL 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 Client on Delivery and the Client 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 Client, MPSTL is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by MPSTL is sufficient evidence of MPSTL's rights to receive the insurance proceeds without the need for any person dealing with MPSTL to make further enquiries.
- 7.3 If the Client requests MPSTL to leave Goods outside MPSTL's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.
- 7.4 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in MPSTL's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by MPSTL.
- 7.5 Where the Client has supplied any materials for MPSTL to complete the Goods and/or Services under this contract, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those materials. MPSTL shall not be responsible for any defects in the Goods, any loss or damage howsoever arising from the use of materials supplied by the Client.

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- 7.6 The Client acknowledges that MPSSL is only responsible for Goods that are replaced by MPSSL and does not at any stage accept any liability in respect of previous services and/or parts supplied by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to indemnify MPSSL against any loss or damage to the Goods, or caused by the parts, or any part thereof howsoever arising.
- 7.7 The Client acknowledges and agree that where MPSSL has performed temporary repairs on the boat that:
- (a) MPSSL offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (b) MPSSL will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required.
- 7.8 MPSSL shall not be liable for any defect in the Goods/Services if the Client does not follow MPSSL's recommendations.
- 7.9 The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
- 7.10 While MPSSL will endeavour to match Goods the matching between new and existing Goods may not be exact due to wear and tear of existing parts.
- 7.11 The Client acknowledges and accepts that Goods supplied by MPSSL may:
- (a) exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. MPSSL will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.
- 7.12 The Client acknowledges and agrees that MPSSL shall be entitled to:
- (a) retain any components replaced during the provision of the Services; and
 - (b) the right to retain all proceeds obtained from the sale of such components to any auto recycler or salvage yard.
- 8. Access**
- 8.1 The Client shall ensure that MPSSL has clear and free access to the Client's premises at all times to enable them to deliver, install or service the Goods/Services. In addition, the Client shall provide MPSSL with any access codes, passwords or other information required in order to complete the Services whether delivered at the Client's premises or by remote access.
- 9. Title**
- 9.1 MPSSL and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid MPSSL all amounts owing to MPSSL; and
 - (b) the Client has met all of its other obligations to MPSSL.
- 9.2 Receipt by MPSSL 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.
- 9.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 9.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to MPSSL on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for MPSSL and must pay to MPSSL the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for MPSSL and must pay or deliver the proceeds to MPSSL on demand;
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of MPSSL and must sell, dispose of or return the resulting product to MPSSL as it so directs;
 - (e) the Client irrevocably authorises MPSSL to enter any premises where MPSSL believes the Goods are kept and recover possession of the Goods;
 - (f) MPSSL may recover possession of any Goods in transit whether or not delivery has occurred;
 - (g) the Client 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 MPSSL;
 - (h) MPSSL may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 10. Personal Property Securities Act 1999 ("PPSA")**
- 10.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Client to MPSSL for Services – that have previously been supplied and that will be supplied in the future by MPSSL to the Client.
- 10.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which MPSSL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, MPSSL for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of MPSSL; and
 - (d) immediately advise MPSSL of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.3 MPSSL and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 10.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

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- 10.5 Unless otherwise agreed to in writing by MPSSL, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 10.6 The Client shall unconditionally ratify any actions taken by MPSSL under clauses 10.1 to 10.5.
- 10.7 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.

11. Security and Charge

- 11.1 In consideration of MPSSL agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Client indemnifies MPSSL from and against all MPSSL's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising MPSSL's rights under this clause.
- 11.3 The Client irrevocably appoints MPSSL and each director of MPSSL as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

12. Defects

- 12.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify MPSSL of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford MPSSL an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which MPSSL has agreed in writing that the Client is entitled to reject, MPSSL's liability is limited to either (at MPSSL's discretion) replacing the Goods or repairing the Goods.
- 12.2 Goods will not be accepted for return other than in accordance with 12.1 above, and provided that:
- (a) MPSSL has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and
 - (c) MPSSL will not be liable for Goods which have not been stored or used in a proper manner; and
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 12.3 MPSSL will not accept the return of non-defective Goods for credit.
- 12.4 Subject to clause 12.1, non-stocklist items or Goods made to the Client's specifications are not acceptable for credit or return.

13. Warranty

- 13.1 Subject to the conditions of warranty set out in clause 13.2 MPSSL warrants that if any defect in any workmanship of MPSSL becomes apparent and is reported to MPSSL within ninety (90) days of the date of delivery (time being of the essence) then MPSSL will either (at MPSSL's sole discretion) replace or remedy the workmanship.
- 13.2 The conditions applicable to the warranty given by clause 13.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Goods; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by MPSSL; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and MPSSL shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without MPSSL's consent.
 - (c) in respect of all claims MPSSL shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 13.3 For Goods not manufactured by MPSSL, the warranty shall be the current warranty provided by the manufacturer of the Goods. MPSSL shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 13.4 In the case of second hand Goods, the Client acknowledges that full opportunity to inspect the same has been provided and accepts the same with all faults and that no warranty is given by MPSSL as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. MPSSL shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

14. Consumer Guarantees Act 1993

- 14.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by MPSSL to the Client.

15. Default and Consequences of Default

- 15.1 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 MPSSL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Client owes MPSSL any money the Client shall indemnify MPSSL from and against all costs and disbursements incurred by MPSSL in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, MPSSL's collection agency costs, and bank dishonour fees).

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- 15.3 Further to any other rights or remedies MPSL may have under this Contract, if a Client has made payment to MPSL, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by MPSL under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 15.4 Without prejudice to MPSL's other remedies at law MPSL shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to MPSL shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to MPSL becomes overdue, or in MPSL's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by MPSL;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

16. Cancellation

- 16.1 Without prejudice to any other remedies MPSL may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions MPSL may suspend or terminate the supply of Goods to the Client. MPSL will not be liable to the Client for any loss or damage the Client suffers because MPSL has exercised its rights under this clause.
- 16.2 MPSL 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 Client. On giving such notice MPSL shall repay to the Client any money paid by the Client for the Goods. MPSL shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by MPSL as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 16.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

17. Privacy Policy

- 17.1 All emails, documents, images or other recorded information held or used by MPSL is Personal Information as defined and referred to in clause 17.3 and therefore considered confidential. MPSL acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). MPSL acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by MPSL that may result in serious harm to the Client, MPSL will notify the Client 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 Client by written consent, unless subject to an operation of law.
- 17.2 Notwithstanding clause 17.1, privacy limitations will extend to MPSL in respect of Cookies where transactions for purchases/orders transpire directly from MPSL's website. MPSL 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 Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to MPSL when MPSL sends an email to the Client, so MPSL may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via MPSL's website.
- 17.3 The Client authorises MPSL or MPSL's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including, 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 or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by MPSL from the Client directly or obtained by MPSL from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 17.4 Where the Client is an individual the authorities under clause 17.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 17.5 The Client shall have the right to request MPSL for a copy of the Personal Information about the Client retained by MPSL and the right to request MPSL to correct any incorrect Personal Information about the Client held by MPSL.

18. Dispute Resolution

- 18.1 All disputes and differences between the Client and MPSL touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

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;

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- (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. Trusts

- 20.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not MPSSL may have notice of the Trust, the Client covenants with MPSSL as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
 - (c) the Client will not without consent in writing of MPSSL (MPSSL will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

21. General

- 21.1 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.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Auckland Courts of New Zealand.
- 21.3 MPSSL shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by MPSSL of these terms and conditions (alternatively MPSSL's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 21.4 MPSSL may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 21.5 The Client cannot licence or assign without the written approval of MPSSL.
- 21.6 MPSSL may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of MPSSL's sub-contractors without the authority of MPSSL.
- 21.7 The Client agrees that MPSSL may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for MPSSL to provide Goods to the Client.
- 21.8 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.
- 21.9 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.