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## Character Cabinets – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 "Character Cabinets" means Southshore Pty Ltd ATF RK & A Van Duyn Family Trust T/A Character Cabinets, its successors and assigns or any person acting on behalf of and with the authority of Southshore Pty Ltd ATF RK & A Van Duyn Family Trust T/A Character Cabinets.
- 1.2 "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by Character Cabinets 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).
- 1.4 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Character Cabinets and the Client in accordance with clause 5 below.
- 1.5 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

### 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Character Cabinets.
- 2.3 These terms and conditions may be meant to be read in conjunction with Character Cabinets' Hire Form, and:
  - (a) where the context so permits, the terms 'Goods' or 'Services' shall include any supply of Equipment, as defined therein; and
  - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

### 3. Electronic Transactions Act 2003

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2003 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 4. Change in Control

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

### 5. Price and Payment

- 5.1 At Character Cabinets' sole discretion, the Price shall be either:
  - (a) as indicated on any invoice provided by Character Cabinets to the Client; or
  - (b) the Price as at the date of delivery of the Goods according to Character Cabinets' current price list; or
  - (c) Character Cabinets' 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 Character Cabinets reserves the right to change the Price if a variation to Character Cabinets' quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such as limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed or as a result of any increase to Character Cabinets in the cost of materials and labour) will be charged for on the basis of Character Cabinets' quotation, and will be detailed in writing together with any changes to the date of completion, and shown as variations on Character Cabinets' invoice. The Client shall be required to respond to any variation submitted by Character Cabinets within ten (10) working days. Failure to do so will entitle Character Cabinets to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.3 At Character Cabinets' sole discretion, a non-refundable deposit may be required.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Character Cabinets, which may be:
  - (a) on delivery of the Goods;
  - (b) by way of instalments/progress payments in accordance with Character Cabinets' payment schedule;
  - (c) for specific approved Clients, the end of the following month in which an invoice has been given to the Client by Character Cabinets;
  - (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 Character Cabinets.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and Character Cabinets.
- 5.6 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 Character Cabinets nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Character Cabinets an amount equal to any GST Character Cabinets must pay for any supply by Character Cabinets 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 Character Cabinets (or Character Cabinets' nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 At Character Cabinets' sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.

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- 6.3 Character Cabinets 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 Character Cabinets for delivery of the Goods is an estimate only and Character Cabinets 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 Character Cabinets is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then Character Cabinets 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, Character Cabinets is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Character Cabinets is sufficient evidence of Character Cabinets' rights to receive the insurance proceeds without the need for any person dealing with Character Cabinets to make further enquiries.
- 7.3 Where Character Cabinets is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Character Cabinets shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 7.4 Character Cabinets shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Character Cabinets accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 7.5 Where the Client has supplied materials for Character Cabinets to complete the Services, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. Character Cabinets shall not be responsible for any defects in the Services, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 7.6 Granite, marble engineered stone, and glass have natural elements in the products that have naturally occurring variations in colour and shade tones, markings, and veining may vary from colour samples provided. Character Cabinets gives no guarantee (expressed or implied) that colour samples will match the Goods supplied. Character Cabinets will make every effort to match colour samples to the Goods supplied but will not be liable in any way whatsoever for colour samples differing from the Goods supplied.
- 7.7 Marble, granite and stainless steel are porous materials therefore all such materials supplied by Character Cabinets are sealed for protection. However, oil and other acidic substances are prone to causing discolouration and staining if left on surfaces for some time. The Client agrees to indemnify Character Cabinets against any damage occurring after delivery and installation.
- 7.8 The Client acknowledges that Goods (including but not limited to paint, timber, tiles) supplied may exhibit variations in shade tone, colour, texture, markings, veining, surface and finish, and may fade or change colour over time. Character Cabinets will make every effort to match batches/samples of the Goods supplied in order to minimise such variations, but shall not be liable in any way whatsoever where such variations occur.
- 7.9 Timber is a natural product. Timber, laminate and engineered timber may exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst Character Cabinets will make every effort to match sales samples to the finished Goods Character Cabinets accepts no liability whatsoever where such samples differ to the finished Goods supplied.
- 7.10 Timber is a hygroscopic material subject to expansion and contraction therefore Character Cabinets will accept no responsibility for gaps that may appear in the timber during prolonged dry periods.
- 7.11 The Client acknowledges that Goods supplied may:
- expand, contract or distort as a result of exposure to heat, cold, weather; and
  - mark, stain or rust if exposed to certain substances; and
  - be damaged or disfigured by impact or scratching.

### 8. Client's Responsibilities

- 8.1 It shall be the Client's responsibility to provide Character Cabinets with free access and use of services (including, but not limited to, power, toilet facilities) to enable Character Cabinets to provide and complete the Service.
- 8.2 Where Character Cabinets notifies the Client that it intends to store onsite Goods, plant, equipment or tools to be used in performance of the Services, then the Client shall designate an area for storage and shall take all reasonable precautions to protect such items against destruction, damage, or theft. In the event that such items are destroyed, damaged or stolen then the cost of replacement shall be added to the Price and will be shown as a variation as per clause 5.2.

### 9. Access

- 9.1 The Client shall ensure that Character Cabinets has clear and free access to the work site at all times to enable them to undertake the works. Character Cabinets 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 Character Cabinets.

### 10. Underground Locations

- 10.1 Prior to Character Cabinets commencing any work the Client must advise Character Cabinets of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

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- 10.2 Whilst Character Cabinets will take all care to avoid damage to any underground services the Client agrees to indemnify Character Cabinets in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.
- 11. Compliance with Laws**
- 11.1 The Client and Character Cabinets shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 11.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 11.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 12. Title**
- 12.1 Character Cabinets and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Character Cabinets all amounts owing to Character Cabinets; and
  - (b) the Client has met all of its other obligations to Character Cabinets.
- 12.2 Receipt by Character Cabinets 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.
- 12.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 12.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to Character Cabinets on request.
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Character Cabinets and must pay to Character Cabinets 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 Character Cabinets and must pay or deliver the proceeds to Character Cabinets 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 Character Cabinets and must sell, dispose of or return the resulting product to Character Cabinets as it so directs.
  - (e) the Client irrevocably authorises Character Cabinets to enter any premises where Character Cabinets believes the Goods are kept and recover possession of the Goods.
  - (f) Character Cabinets 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 Character Cabinets.
  - (h) Character Cabinets may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 13. Personal Property Securities Act 2009 ("PPSA")**
- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 13.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to Character Cabinets for Services – that have previously been supplied and that will be supplied in the future by Character Cabinets to the Client.
- 13.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Character Cabinets may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, Character Cabinets 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;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of Character Cabinets;
  - (d) 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 Character Cabinets;
  - (e) immediately advise Character Cabinets 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.
- 13.4 Character Cabinets and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by Character Cabinets, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client must unconditionally ratify any actions taken by Character Cabinets under clauses 13.3 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

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### 14. Security and Charge

- 14.1 In consideration of Character Cabinets 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).
- 14.2 The Client indemnifies Character Cabinets from and against all Character Cabinets' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Character Cabinets' rights under this clause.
- 14.3 The Client irrevocably appoints Character Cabinets and each director of Character Cabinets as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.

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

- 15.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify Character Cabinets in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Character Cabinets to inspect the Goods.
- 15.2 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**).
- 15.3 Character Cabinets acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Character Cabinets makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Character Cabinets' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Client is a consumer within the meaning of the CCA, Character Cabinets' liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If Character Cabinets is required to replace the Goods under this clause or the CCA, but is unable to do so, Character Cabinets may refund any money the Client has paid for the Goods.
- 15.7 If the Client is not a consumer within the meaning of the CCA, Character Cabinets' 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 Client by Character Cabinets at Character Cabinets' sole discretion;
  - (b) limited to any warranty to which Character Cabinets is entitled, if Character Cabinets did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 15.8 Subject to this clause 15, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 15.1; and
  - (b) Character Cabinets has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Client'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.
- 15.9 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, Character Cabinets shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;
  - (b) the Client using the Goods for any purpose other than that for which they were designed;
  - (c) the Client 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 Client failing to follow any instructions or guidelines provided by Character Cabinets;
  - (e) fair wear and tear, any accident, or act of God.
- 15.10 Notwithstanding anything contained in this clause if Character Cabinets is required by a law to accept a return then Character Cabinets will only accept a return on the conditions imposed by that law.

### 16. Intellectual Property

- 16.1 Where Character Cabinets has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Character Cabinets. Under no circumstances may such designs, drawings and documents be used without the express written approval of Character Cabinets.
- 16.2 The Client warrants that all designs, specifications or instructions given to Character Cabinets will not cause Character Cabinets to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Character Cabinets against any action taken by a third party against Character Cabinets in respect of any such infringement.
- 16.3 The Client agrees that Character Cabinets may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Character Cabinets has created for the Client.

### 17. Default and Consequences of Default

- 17.1 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 Character Cabinets' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes Character Cabinets any money the Client shall indemnify Character Cabinets from and against all costs and disbursements incurred by Character Cabinets in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Character Cabinets' contract default fee, and bank dishonour fees).
- 17.3 Further to any other rights or remedies Character Cabinets may have under this contract, if a Client has made payment to Character Cabinets, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to

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any further costs incurred by Character Cabinets under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.

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

### 18. Cancellation

- 18.1 Without prejudice to any other remedies Character Cabinets may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Character Cabinets may suspend or terminate the supply of Goods to the Client. Character Cabinets will not be liable to the Client for any loss or damage the Client suffers because Character Cabinets has exercised its rights under this clause.
- 18.2 Character Cabinets 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 Character Cabinets shall repay to the Client any money paid by the Client for the Goods. Character Cabinets shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Character Cabinets as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.4 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.

### 19. Privacy Act 1988

- 19.1 The Client agrees for Character Cabinets to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Character Cabinets.
- 19.2 The Client agrees that Character Cabinets may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 19.3 The Client consents to Character Cabinets being given a consumer credit report to collect overdue payment on commercial credit.
- 19.4 The Client agrees that personal credit information provided may be used and retained by Character Cabinets 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 Client'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 Client; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 19.5 Character Cabinets may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 19.6 The information given to the CRB may include:
- (a) personal information as outlined in 19.1 above;
  - (b) name of the credit provider and that Character Cabinets is a current credit provider to the Client;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Character Cabinets has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of Character Cabinets, the Client has committed a serious credit infringement;
  - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.7 The Client shall have the right to request (by e-mail) from Character Cabinets:
- (a) a copy of the information about the Client retained by Character Cabinets and the right to request that Character Cabinets correct any incorrect information; and
  - (b) that Character Cabinets does not disclose any personal information about the Client for the purpose of direct marketing.
- 19.8 Character Cabinets will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 19.9 The Client can make a privacy complaint by contacting Character Cabinets via e-mail. Character Cabinets will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of

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the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

### 20. Unpaid Seller's Rights

- 20.1 Where the Client has left any item with Character Cabinets for repair, modification, exchange or for Character Cabinets to perform any other service in relation to the item and Character Cabinets has not received or been tendered the whole of any monies owing to it by the Client, Character Cabinets shall have, until all monies owing to Character Cabinets 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.
- 20.2 The lien of Character Cabinets shall continue despite the commencement of proceedings, or judgment for any monies owing to Character Cabinets having been obtained against the Client.

### 21. Service of Notices

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

### 22. Dispute Resolution

- 22.1 If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
  - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

### 23. Construction Contracts Act 2004

- 23.1 At the Seller's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Construction Contracts Act 2004 may apply.
- 23.2 Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act where applicable.

### 24. General

- 24.1 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.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia in which Character Cabinets has its principal place of business, and are subject to the jurisdiction of the Perth Court, Western Australia
- 24.3 Subject to clause 15, Character Cabinets 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 Character Cabinets of these terms and conditions (alternatively Character Cabinets' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 24.4 Neither party shall assign or sub-contract all or any part of their rights and obligations under this agreement without the written consent of the other party.
- 24.5 The Client agrees that Character Cabinets may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Character Cabinets to provide Goods to the Client.
- 24.6 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.
- 24.7 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.