



Ph: (03) 9587 4499 E: admin@drcswitchboards.com.au



DRC Switchboards Pty Ltd – Terms & Conditions of Trade

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1. Definitions

- 1.1 "DRC" means DRC Switchboards Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of DRC Switchboards Pty Ltd.
- 1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by DRC to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between DRC and the Customer 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 Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 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 Customer and DRC.
- 2.3 The Customer acknowledges and accepts that 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, DRC reserves the right to vary the Price with alternative Goods as per clause (relevant clause under Price and Payment). DRC also reserves the right to halt all Services until such time as DRC and the Customer agree to such changes. DRC shall not be liable to the Customer for any loss or damage the Customer suffers due to DRC exercising its rights under this clause.
- 2.4 All literature, samples, specifications, submitted with this quotation is expressly illustrative and is by way of a general description of Goods only in accordance with industry standards. Any descriptions, dimensions or specifications contained in catalogues and other advertising material while being as accurate as possible but may not necessarily be identical with products and Services DRC is to supply. DRC will not accept liability to the Customer for quality of Goods which comply with accepted industry standards.

3. Electronic Transactions Act 2000

- 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 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

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

5. Price and Payment

- 5.1 At DRC's sole discretion, the Price shall be either:
 - (a) as indicated on any invoice provided by DRC to the Customer; or
 - (b) DRC's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 DRC 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) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, availability of machinery, prerequisite work by any third party not being completed, change of design, etc) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to DRC in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges and/or additional package requests from the Customer) which are beyond DRC's control.
- 5.3 Variations will be charged for on the basis of DRC's quotation, and will be detailed in writing, and shown as variations on DRC's invoice. The Customer shall be required to respond to any variation submitted by DRC within ten (10) working days. Failure to do so will entitle DRC 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 DRC'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 Customer on the date/s determined by DRC, which may be:
 - (a) by way of instalments/progress payments in accordance with DRC's payment schedule;
 - (b) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
 - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by DRC.
- 5.6 Payment may be made by cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and DRC.
- 5.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by DRC nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, DRC reserves the right to treat all retentions as placing the Customer's account into default.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to DRC an amount equal to any GST DRC must pay for any supply by DRC under this or any other agreement for the sale of the Goods. The Customer must pay GST without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery of Goods

- 6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that DRC (or DRC's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 At DRC's sole discretion, the cost of delivery is included in the Price (including but not limited to, all Goods ready for dispatch are packaged subject to DRC's standard practice, any additional packaging requested by the Customer, shall be invoiced as an extra in accordance with clause 5.2).
- 6.3 Subject to clause 6.4 it is DRC's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.4 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that DRC claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond DRC's control, including but not limited to any failure by the Customer to:
 - (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify DRC that the site is ready.
- 6.5 DRC 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.
- 6.6 Any time specified by DRC for delivery of the Goods is an estimate only and DRC will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that DRC is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then DRC shall be entitled to charge a reasonable fee for redelivery and/or storage.



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7. Risk

7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, DRC is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by DRC is sufficient evidence of DRC's rights to receive the insurance proceeds without the need for any person dealing with DRC to make further enquiries.

7.3 If the Customer requests DRC to leave Goods outside DRC's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.

7.4 In the event that the Customer provides DRC with any information and/or measurements relating to the supply of the Goods, DRC shall be entitled to rely on the accuracy of any such information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, DRC accepts no responsibility for any loss, damages, or costs however resulting from the supply of inaccurate measurements or other information.

7.5 The Customer acknowledges that it is their responsibility to ensure that all Goods, plant or equipment which DRC is to supply (or are to connect any of its Goods to) are of the correct type, size, rating, standard, quality, colour and finish, conform with all relevant Australian standards and local statutory requirements, and are as specified in the specifications, drawings and plans upon which DRC based the quotation on and therefore, the Customer agrees to indemnify DRC against any costs incurred by DRC in rectifying such errors if required.

8. Access

8.1 The Customer shall ensure that DRC has clear and free access to the work site at all times to enable them to undertake the Services. DRC 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 DRC.

9. Compliance with Laws

9.1 The Customer and DRC shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.

9.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.

9.3 The Customer agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

9.4 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring rules.

9.5 In the event that the Customer requires any additional testing to be carried out either on site or at DRC's premises, all associated costs with such testing shall be borne by Customer. DRC agrees to advise the Customer by giving at least seven (7) days written notice prior to commencement of the testing.

10. Title

10.1 DRC and the Customer agree that ownership of the Goods shall not pass until:

(a) the Customer has paid DRC all amounts owing to DRC; and

(b) the Customer has met all of its other obligations to DRC.

10.2 Receipt by DRC of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

10.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 10.1:

(a) the Customer is only a bailee of the Goods and must return the Goods to DRC on request.

(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for DRC and must pay to DRC the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.

(c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for DRC and must pay or deliver the proceeds to DRC on demand.

(d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of DRC and must sell, dispose of or return the resulting product to DRC as it so directs.

(e) the Customer irrevocably authorises DRC to enter any premises where DRC believes the Goods are kept and recover possession of the Goods.

(f) DRC may recover possession of any Goods in transit whether or not delivery has occurred.

(g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of DRC.

(h) DRC may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

11. Personal Property Securities Act 2009 ("PPSA")

11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

11.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to DRC for Services – that have previously been supplied and that will be supplied in the future by DRC to the Customer.

11.3 The Customer undertakes to:

(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which DRC may reasonably require to;

(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

(ii) register any other document required to be registered by the PPSA; or

(iii) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii);

(b) indemnify, and upon demand reimburse, DRC 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 DRC;

(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 DRC;

(e) immediately advise DRC 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.

11.4 DRC and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

11.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

11.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

11.7 Unless otherwise agreed to in writing by DRC, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

11.8 The Customer must unconditionally ratify any actions taken by DRC under clauses 11.3 to 11.5.

11.9 Subject to any express provisions to the contrary (including those contained in this clause 11) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

12. Security and Charge

12.1 In consideration of DRC agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

12.2 The Customer indemnifies DRC from and against all DRC's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising DRC's rights under this clause.

12.3 The Customer irrevocably appoints DRC and each director of DRC as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf.



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

13.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify DRC in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow DRC to inspect the Goods.

13.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).

13.3 DRC acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, DRC makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. DRC's liability in respect of these warranties is limited to the fullest extent permitted by law.

13.5 If the Customer is a consumer within the meaning of the CCA, DRC's liability is limited to the extent permitted by section 64A of Schedule 2.

13.6 If DRC is required to replace the Goods under this clause or the CCA, but is unable to do so, DRC may refund any money the Customer has paid for the Goods.

13.7 If the Customer is not a consumer within the meaning of the CCA, DRC's liability for any defect or damage in the Goods is:

- (a) limited to the value of any express warranty or warranty card provided to the Customer by DRC at DRC's sole discretion;
- (b) limited to any warranty to which DRC is entitled, if DRC did not manufacture the Goods;
- (c) otherwise negated absolutely.

13.8 Subject to this clause 13, returns will only be accepted provided that:

- (a) the Customer has complied with the provisions of clause 13.1; and
- (b) DRC has agreed that the Goods are defective; and
- (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

13.9 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, DRC shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- (a) the Customer failing to properly maintain or store any Goods;
- (b) no unauthorised works or modifications have taken place by the Customer;
- (c) the Customer using the Goods for any purpose other than that for which they were designed;
- (d) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (e) the Customer failing to follow any instructions or guidelines provided by DRC;
- (f) fair wear and tear, any accident, or act of God.

13.10 Notwithstanding anything contained in this clause if DRC is required by a law to accept a return then DRC will only accept a return on the conditions imposed by that law.

14. Intellectual Property

14.1 Where DRC has designed, drawn or developed Goods for the Customer, then the copyright, patents or licences in any designs and drawings and documents shall remain the property of DRC. Under no circumstances may such designs, drawings and documents be used without the express written approval of DRC.

14.2 The Customer warrants that all designs, specifications or instructions given to DRC will not cause DRC to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify DRC against any action taken by a third party against DRC in respect of any such infringement.

14.3 The Customer agrees that DRC may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which DRC has created for the Customer.

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 DRC's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

15.2 If the Customer owes DRC any money the Customer shall indemnify DRC from and against all costs and disbursements incurred by DRC in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customerbasis, DRC's contract default fee, and bank dishonour fees).

15.3 Further to any other rights or remedies DRC may have under this contract, if a Customer has made payment to DRC, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by DRC under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.

15.4 Without prejudice to DRC's other remedies at law DRC shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to DRC shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to DRC becomes overdue, or in DRC's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer has exceeded any applicable credit limit provided by DRC;
- (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

16. Cancellation

16.1 Without prejudice to any other remedies DRC may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions DRC may suspend or terminate the supply of Goods to the Customer. DRC will not be liable to the Customer for any loss or damage the Customer suffers because DRC has exercised its rights under this clause.

16.2 DRC may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice DRC shall repay to the Customer any money paid by the Customer for the Goods. DRC shall not be liable for any loss or damage whatsoever arising from such cancellation.

16.3 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by DRC 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 Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

17. Privacy Act 1988

17.1 The Customer agrees for DRC 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 Customer in relation to credit provided by DRC.

17.2 The Customer agrees that DRC may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:

- (a) to assess an application by the Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.

17.3 The Customer consents to DRC being given a consumer credit report to collect overdue payment on commercial credit.

17.4 The Customer agrees that personal credit information provided may be used and retained by DRC for the following purposes (and for other agreed purposes or required by):

- (a) the provision of Goods; and/or
- (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (d) enabling the collection of amounts outstanding in relation to the Goods.

17.5 DRC may give information about the Customer to a CRB for the following purposes:

- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.



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17.6 The information given to the CRB may include:

- (a) personal information as outlined in 17.1 above;
- (b) name of the credit provider and that DRC is a current credit provider to the Customer;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and DRC has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of DRC, the Customer has committed a serious credit infringement;
- (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

17.7 The Customer shall have the right to request (by e-mail) from DRC:

- (a) a copy of the information about the Customer retained by DRC and the right to request that DRC correct any incorrect information; and
- (b) that DRC does not disclose any personal information about the Customer for the purpose of direct marketing.

17.8 DRC will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.

17.9 The Customer can make a privacy complaint by contacting DRC via e-mail. DRC will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

18. Unpaid Seller's Rights

18.1 Where the Customer has left any item with DRC for repair, modification, exchange or for DRC to perform any other service in relation to the item and DRC has not received or been tendered the whole of any monies owing to it by the Customer, DRC shall have, until all monies owing to DRC 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.

18.2 The lien of DRC shall continue despite the commencement of proceedings, or judgment for any monies owing to DRC having been obtained against the Customer.

19. Service of Notices

19.1 Any written notice given under this contract shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this contract;
- (c) by sending it by registered post to the address of the other party as stated in this contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.

19.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

20. Dispute Resolution

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

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

21. Building and Construction Industry Security of Payment Act 2002

19.1 At DRC's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.

19.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.

22. General

22.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which DRC has its principal place of business, and are subject to the jurisdiction of the Courts of Victoria.

22.3 Subject to clause 13 DRC shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by DRC of these terms and conditions, and:

- (a) the Customer shall not be entitled to claim for liquidated damages, unless the loss or expense suffered by the Customer is due to DRC negligence; and
- (b) DRC's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods.

22.4 The Customer agrees that DRC may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for DRC to provide Goods to the Customer.

22.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

22.6 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.



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