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## Novaproducts Global – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 “Novaproducts” means Novaproducts Global Pty Ltd as The Trustee for NAP Global Trust trading as Novaproducts Global, its successors and assigns or any person acting on behalf of and with the authority of Novaproducts Global Pty Ltd as The Trustee for NAP Global Trust trading as Novaproducts Global.
- 1.2 “Customer” means the person/s or any person acting on behalf of and with the authority of the Customer requesting Novaproducts to provide the Goods and/or Services as specified in any proposal, quotation, order, invoice or other documentation, and:  
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and  
(b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and  
(c) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.3 “Goods” means all Goods or Services supplied by Novaproducts 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 “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.
- 1.5 “Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.6 “Price” means the Price payable (plus any GST where applicable) for the Goods as agreed between Novaproducts and the Customer in accordance with clause 6 below.
- 1.7 “GST” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

### 2. Acceptance

- 2.1 The Customer acknowledges and accepts that these terms and conditions are perpetual and cannot be removed from any quotations, estimation, ballpark figure (given verbally or in writing) or other documentation supplied by Novaproducts.
- 2.2 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.
- 2.3 Telephone orders must be confirmed in writing marked “Confirmation Only” promptly and no later than twenty-four (24) hours after placing the telephone order by the Customer. Should there be any discrepancy between the orders on telephone as recorded by Novaproducts and the confirmation in writing by the Customer, Novaproducts’ record of the telephone order shall prevail unless Novaproducts expressly agrees in writing to vary the order placed by the Customer on the telephone.
- 2.4 Any email received by Novaproducts from the domain address of the Customer, is prima facie evidence of the requirement as an order and immediately becomes a purchase order within acceptance of Novaproducts’ rights; no further need for Customer authorisation will be required.
- 2.5 Goods are supplied by Novaproducts only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 2.6 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 contract between the Customer and Novaproducts.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2011 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.8 These terms and conditions may be meant to be read in conjunction with Novaproducts’ 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.
- 2.9 The Customer agrees to accurately complete and sign the Credit Card Authorisation Form, the contents of which shall form part of this contract, thereby, consenting to Novaproducts, that in the event that the Customer becomes in default of payment for any reason, then Novaproducts reserves the right to automatically debit the Customer’s credit card.
- 2.10 Once accepted by the Customer, Novaproducts’ written quotation, estimation shall be deemed to interpret correctly the Customer’s instructions, whether written or verbal. Where handwritten instructions only are received from the Customer, Novaproducts shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions including where the handwriting is difficult to decipher.

### 3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that Novaproducts 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 Novaproducts 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 Novaproducts 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 Novaproducts; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

### 4. Change in Control

- 4.1 The Customer shall give Novaproducts 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 number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by Novaproducts as a result of the Customer’s failure to comply with this clause.

### 5. Credit Card Information

- 5.1 Novaproducts will:

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- (a) keep the Customer's Personal Information, including credit card details for only as long as is deemed necessary by Novaproducts;
  - (b) not disclose the Customer's credit card details to any third party;
  - (c) not unnecessarily disclose any of the Customer's Personal Information, except in accordance with the Privacy Policy (clause 19) or where required by law.
- 5.2 The Customer expressly agrees that, if pursuant to this contract, there are:
- (a) any unpaid charges; and
  - (b) other amounts due and outstanding by the Customer; then
  - (c) Novaproducts is entitled to immediately charge the Customer's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Customer pursuant to the terms of this contract.
- 6. Price and Payment**
- 6.1 The Customer acknowledges and accepts that the total Price represents an amount for the contract and is also representative of the whole document, email and/or attachments sent with it from Novaproducts and is inseparable from Novaproducts' terms and conditions.
- 6.2 At Novaproducts' sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by Novaproducts to the Customer; or
  - (b) Novaproducts' quoted price (subject to clause 6.3) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.3 Novaproducts reserves the right to change the Price if a variation to Novaproducts' 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 poor weather conditions, limitations to accessing the site, availability of Goods, safety considerations, prerequisite work by any third party not being completed or as a result of any increase to Novaproducts in the cost of Goods and labour) will be charged for on the basis of Novaproducts' quotation and will be shown as variations on the invoice. The Customer shall be required to respond to any variation submitted by Novaproducts within ten (10) working days. Failure to do so will entitle Novaproducts 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.
- 6.4 Further to clause 6.3, if Novaproducts varies the Price in any way, it is taken as replacement of the original Price and shall be binding perpetually these terms and conditions.
- 6.5 At Novaproducts' sole discretion, a deposit may be required.
- 6.6 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Novaproducts, which may be:
- (a) on Delivery of the Goods;
  - (b) before Delivery of the Goods;
  - (c) by way of instalments/progress payments in accordance with Novaproducts' payment schedule;
  - (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 Customer by Novaproducts.
- 6.7 At the agreement of both parties, payment of the Price may be subject to retention by the Customer of an amount (hereafter called the "Retention Money"), being equal to a percentage of the Price as agreed between the parties. The Customer shall hold the Retention Money for the agreed period following completion of the Services during which time all Services are to be completed and/or all defects are to be remedied.
- 6.8 Payment may be made by cash, bank cheque, electronic/on-line banking, credit card excluding Amex (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Novaproducts.
- 6.9 Any payments tendered by the Customer to Novaproducts where the Customer is in default of their obligations of payment shall be applied as follows:
- (a) firstly, as reimbursement for any collection costs incurred by Novaproducts;
  - (b) secondly, in payment of any interest charges; and
  - (c) thirdly, in satisfaction or part satisfaction of the oldest portion of the Customer's outstanding account.
- 6.10 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 Novaproducts nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.11 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Novaproducts an amount equal to any GST Novaproducts must pay for any supply by Novaproducts under this or any other contract 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.
- 7. Delivery of Goods**
- 7.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Novaproducts' address; or
  - (b) Novaproducts (or Novaproducts' nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.2 Delivery of the Goods to a third party nominated by the Customer is deemed to be Delivery to the Customer for the purposes of this contract.
- 7.3 At Novaproducts' sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.
- 7.4 Any time specified by Novaproducts for Delivery of the Goods is an estimate only and Novaproducts 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 Novaproducts is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then Novaproducts shall be entitled to charge a reasonable fee for redelivery and/or storage. In the event that the Goods are to be stored at premises other than Novaproducts' usual place of business then the Customer shall be liable for all reasonable fees incurred by Novaproducts in storing the Goods offsite (including cartage).
- 7.5 Where Novaproducts cannot access the site to deliver the Goods, the Goods shall be delivered and left as close as practicable to the site. Or in the event the Customer requests Novaproducts enter a property to deliver the Goods, then Novaproducts accepts no responsibility for any damage caused by Novaproducts in doing so.

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- 7.6 Unless agreed otherwise in writing, prior to Delivery, the unloading of Goods shall be the Customer's responsibility and Novaproducts will not be responsible for any damage resulting from the unloading of Goods by the Customer, or by anyone on its behalf.
- 7.7 The Customer agrees that if Novaproducts' delivery truck is held on site for longer than fifteen (15) minutes due to circumstances beyond the control of Novaproducts, then additional charges will apply.
- 7.8 If Delivery is delayed as a consequence of the Customer's instructions, or lack thereof, then Novaproducts may at its sole discretion store the Goods for the Customer and Novaproducts shall charge the Customer a reasonable fee for such storage.

### 8. Risk

- 8.1 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.
- 8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, Novaproducts is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Novaproducts is sufficient evidence of Novaproducts' rights to receive the insurance proceeds without the need for any person dealing with Novaproducts to make further enquiries.
- 8.3 If the Customer requests Novaproducts to leave Goods outside Novaproducts' premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 8.4 Where Novaproducts is to install the Goods, the Customer warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos) that Novaproducts, or employees of Novaproducts, reasonably form the opinion that the Customer's premises is not safe for the installation of Goods to proceed then Novaproducts shall be entitled to delay installation of the Goods until Novaproducts is satisfied that it is safe for the installation to proceed.
- 8.5 The Customer acknowledges and accepts that Goods are built and installed to the Building Code of Australia (BCA) or the National Construction Code (NCC), whichever shall be pertinent.
- 8.6 Where Novaproducts has imported Goods, or has made (or had made) Goods to specific Customer requirements then Delivery of those Goods shall be deemed to have taken place and all risk for those particular Goods shall pass to the Customer immediately those Goods are received by, and/or placed into storage by Novaproducts, and Novaproducts has notified the Customer of the same. Upon receipt of such notification it shall be the Customer's responsibility to ensure that those particular Goods are insured adequately or at all. All such Goods will be stored at the Customer's expense on the same basis as specified in clause 7.8 above.
- 8.7 Novaproducts may compute an estimate of dimensions and quantities of Goods based on plans or other information given by, or on behalf of the Customer. Novaproducts does not accept any liability as to the correct computation of any such estimate, and the estimate is provided to the Customer as indicative only and Novaproducts is not responsible for any mistakes or errors in the estimate. The Customer undertakes to check any such estimate and in any event accepts full responsibility for the dimensions and quantities of Goods ordered as independently computed by the Customer without relying on the estimate and unless otherwise stated Novaproducts do not allow for testing, mock up samples other than what Novaproducts has available to them.
- 8.8 Where Novaproducts gives advice, recommendations, information, assistance or service to the Customer regarding the suitability or purpose of the Goods, or in connection with the design, delivery times, dimensions, installation or use of the Goods, then it is given in good faith and Novaproducts shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Customer relying on the same.
- 8.9 The Customer agrees that as a condition of sale, any description or specification given by Novaproducts, or in any printed literature of Novaproducts is for general indicative purposes only and shall not be taken as implying as to fitness for any particular purpose, and does not render Novaproducts responsible howsoever and whatsoever except to the extent that the Goods shall comply with the standards set out in such description or specification.
- 8.10 In the event the Goods are required for a particular purpose, the Customer must clearly specify that purpose in writing in the order placed with Novaproducts and obtain written assurance from Novaproducts that the Goods, when supplied, will meet that requirement. In the event the Customer fails to comply with this clause, then the Customer agrees that it did not rely on the skill or judgement of Novaproducts in relation to the suitability of the Goods for a particular purpose.
- 8.11 The Customer acknowledges and accepts that:
- (a) due to the manufacturing process, superficial defects may be visible within four metres (4m) and innate undulations visible in CFC panels from any distance; and
  - (b) such superficial defects and innate undulations shall not be deemed to be a defect for the purposes of a warranty claim.

### 9. Access

- 9.1 The Customer shall ensure that Novaproducts has clear and free access to the site at all times to enable them to undertake the Services. Novaproducts 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 Novaproducts.

### 10. Underground Locations

- 10.1 Prior to Novaproducts commencing any work the Customer must advise Novaproducts of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Customer 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.
- 10.2 Whilst Novaproducts will take all care to avoid damage to any underground services the Customer agrees to indemnify Novaproducts 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 Customer and Novaproducts 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 Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 11.3 The Customer 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.

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- 12. Title**
- 12.1 Novaproducts and the Customer agree that ownership of the Goods shall not pass until:  
(a) the Customer has paid Novaproducts all amounts owing to Novaproducts including retentions where applicable; and  
(b) the Customer has met all of its other obligations to Novaproducts.
- 12.2 Receipt by Novaproducts 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 Customer in accordance with clause 12.1:  
(a) the Customer is only a bailee of the Goods and must return the Goods to Novaproducts on request;  
(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Novaproducts and must pay to Novaproducts 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 Novaproducts and must pay or deliver the proceeds to Novaproducts 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 Novaproducts and must sell, dispose of or return the resulting product to Novaproducts as it so directs;  
(e) the Customer irrevocably authorises Novaproducts to enter any premises where Novaproducts believes the Goods are kept and recover possession of the Goods;  
(f) Novaproducts 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 Novaproducts;  
(h) Novaproducts may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 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 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 Novaproducts for Services – that have previously been supplied and that will be supplied in the future by Novaproducts to the Customer.
- 13.3 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 Novaproducts 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, Novaproducts 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 Novaproducts;  
(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 Novaproducts;  
(e) immediately advise Novaproducts 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 Novaproducts 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.
- 13.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Customer 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 Novaproducts, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Customer must unconditionally ratify any actions taken by Novaproducts 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.
- 14. Security and Charge**
- 14.1 In consideration of Novaproducts 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).
- 14.2 The Customer indemnifies Novaproducts from and against all Novaproducts' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Novaproducts' rights under this clause.
- 14.3 The Customer irrevocably appoints Novaproducts and each director of Novaproducts as the Customer'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 Customer's behalf.
- 15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 15.1 The Customer must inspect the Goods on Delivery and must within seven (7) days of Delivery notify Novaproducts 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 Novaproducts to inspect the Goods.

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- 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 Novaproducts 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, Novaproducts makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Novaproducts' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Customer is a consumer within the meaning of the CCA, Novaproducts' liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If Novaproducts is required to replace the Goods under this clause or the CCA, but is unable to do so, Novaproducts may refund any money the Customer has paid for the Goods.
- 15.7 If the Customer is not a consumer within the meaning of the CCA, Novaproducts' 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 Novaproducts at Novaproducts' sole discretion;
  - (b) limited to any warranty to which Novaproducts is entitled, if Novaproducts 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 Customer has complied with the provisions of clause 15.1; and
  - (b) Novaproducts 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.
- 15.9 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, Novaproducts shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
  - (b) the Customer using the Goods for any purpose other than that for which they were designed;
  - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Customer failing to follow any instructions or guidelines provided by Novaproducts;
  - (e) fair wear and tear, any accident, or act of God.
- 15.10 The Customer acknowledges and accepts that no temporary replacement costs are allowed for during a warranty claim assessment by Novaproducts. Furthermore, Novaproducts does not allow for removal or consequential costs allowed for in replacement products.
- 15.11 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to Delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Novaproducts as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that Novaproducts has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 15.11.
- 15.12 Novaproducts may in its absolute discretion accept non-defective Goods for return in which case Novaproducts may require the Customer to pay handling fees of up to thirty percent (30%) of the value of the returned Goods plus any freight costs.
- 15.13 Subject to clause 15.1, customised, or non-stocklist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.
- 16. Intellectual Property**
- 16.1 Where Novaproducts has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Novaproducts. Under no circumstances may such designs, drawings and documents be used without the express written approval of Novaproducts.
- 16.2 The Customer agrees that Novaproducts may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Novaproducts has created for the Customer.
- 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 Novaproducts' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Customer owes Novaproducts any money the Customer shall indemnify Novaproducts from and against all costs and disbursements incurred by Novaproducts in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Novaproducts' contract default fee, and bank dishonour fees).
- 17.3 Further to any other rights or remedies Novaproducts may have under this contract, if a Customer has made payment to Novaproducts, 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 Novaproducts under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.
- 17.4 Without prejudice to Novaproducts' other remedies at law Novaproducts shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Novaproducts shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Novaproducts becomes overdue, or in Novaproducts' 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 Novaproducts;
  - (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.

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### 18. Cancellation

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

### 19. Privacy Policy

- 19.1 All emails, documents, images or other recorded information held or used by Novaproducts is Personal Information, as defined and referred to in clause 19.3, and therefore considered Confidential Information. Novaproducts acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Novaproducts acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by Novaproducts that may result in serious harm to the Customer, Novaproducts will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 19.2 Notwithstanding clause 19.1, privacy limitations will extend to Novaproducts in respect of Cookies where transactions for purchases/orders transpire directly from Novaproducts's website. Novaproducts agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to Novaproducts when Novaproducts sends an email to the Customer, so Novaproducts may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Novaproducts's website.
- 19.3 The Customer agrees for Novaproducts to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. 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) about the Customer in relation to credit provided by Novaproducts.
- 19.4 The Customer agrees that Novaproducts 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.
- 19.5 The Customer consents to Novaproducts being given a consumer credit report to collect overdue payment on commercial credit.
- 19.6 The Customer agrees that personal credit information provided may be used and retained by Novaproducts 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.
- 19.7 Novaproducts 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.
- 19.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 19.3 above;
  - (b) name of the credit provider and that Novaproducts 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 Novaproducts has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of Novaproducts, 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).
- 19.9 The Customer shall have the right to request (by e-mail) from Novaproducts:

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- (a) a copy of the Personal Information about the Customer retained by Novaproducts and the right to request that Novaproducts correct any incorrect Personal Information; and
  - (b) that Novaproducts does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 19.10 Novaproducts 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 Contract or is required to be maintained and/or stored in accordance with the law.
- 19.11 The Customer can make a privacy complaint by contacting Novaproducts via e-mail. Novaproducts 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](http://www.oaic.gov.au).

### 20. Construction Contracts Act 2004

- 20.1 At Novaproducts' 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.
- 20.2 Nothing in this contract 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.

### 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 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. Trusts

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

### 23. General

- 23.1 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.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia, the state in which Novaproducts has its principal place of business, and are subject to the jurisdiction of the courts of Western Australia.
- 23.3 Subject to clause 15, Novaproducts 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 Novaproducts of these terms and conditions (alternatively Novaproducts' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 23.4 Novaproducts may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 23.5 The Customer cannot licence or assign without the written approval of Novaproducts.
- 23.6 Novaproducts may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Novaproducts' sub-contractors without the authority of Novaproducts.
- 23.7 The Customer agrees that Novaproducts 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 Novaproducts to provide Goods to the Customer.
- 23.8 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.
- 23.9 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.