



TransTank[®]
INTERNATIONAL

SALES & CREDIT

TERMS AND CONDITIONS

www.tti.com.au

HELPING TO DEVELOP AND PROTECT THE LAND

Trafford Group Pty Ltd

Terms and Conditions of Sales & Credit

1) DEFINITIONS

A) In this Agreement, the following words have the following meanings unless the context clearly requires otherwise:

“**ACL**” means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth) as amended.

“**Agreement**” means these Terms and Conditions of Sales & Credit and any other contract specifically incorporated by reference.

“**Business Day**” means any day that is not a Saturday or Sunday or public holiday in the state of Victoria.

“**Confidential Information**” means all information of a confidential or proprietary nature owned or held by **TTI** including wholesale pricing information and technical information, advice, know-how, drawings, designs, and samples.

“**Customer**” means each and every party, jointly and severally, listed on the credit application or invoice attached to this Agreement or, if no party is named, the party to whom **TTI** provides this Agreement.

“**Delivery**” means delivery of Products or Services at or to a Site.

“**GST**” means the Products and Services Tax as defined in A New Tax System (Goods and Services Act) 1999 (Cth) as amended.

“**Notice of Dispute**” has the meaning defined in 21(c).

“**Official Collateral**” means any printed or electronic document or information (including any product handbook, product brochure or web page) concerning any of the Products which is published or distributed by **TTI**.

“**Order**” means a request by the Customer to

TTI for provision of Products or Services.

“**PPSA**” means the Personal Property Securities Act 2009 (Cth) as amended.

“**Price List**” means the list prices for Products and Services kept and updated from time to time by **TTI**.

“**Products**” means any products, which **TTI** sells or provides to the Customer from time to time.

“**Reseller**” means any Customer that acquires the Products from time to time for the purpose of resale.

“**Reseller Terms & Conditions**” means the document by that name issued by **TTI** from time to time to govern the relationship between **TTI** and the Customer when the Customer is also a Reseller.

“**Services**” means any services which **TTI** sells or provides to the Customer from time to time.

“**Site**” means any location to which the Customer requests that Product be delivered or at which Services are to be performed.

“**Third-Party Products**” means products manufactured by third parties and sold or supplied by **TTI**, whether as:

- (i) separate, stand-alone items;
- (ii) integrated components of products manufactured by **TTI**; or
- (iii) accessories to products manufactured by **TTI**;

including any engine, gearbox, pump, and regulator sold or supplied by **TTI**.

“**TTI**” means Trafford Group Pty Ltd (ACN 165 797 277) its successors, assigns, employees, servants and agents.

b) Words defined in the singular have the corresponding meaning in the plural, and

vice versa.

- c) Pronouns importing one gender refer to all genders.
- d) Footnotes may be used to interpret this Agreement in the case of ambiguity, but do not otherwise form part of this Agreement.

2) ACCEPTANCE OF AGREEMENT

The Customer may enter into this Agreement with **TTI** by either:

- A)** signing a copy of this Agreement; or
- B)** signing any other form of acknowledgment of this Agreement; or
- C)** signing a credit application after having received a copy of this Agreement at some prior time, whether such copy was contained in an invoice in relation to any previous supply of Products or Services or otherwise; or
- D)** making an Order after having received a copy of this Agreement at some prior time, whether such copy was contained in an invoice in relation to any previous supply of Products or Services or otherwise.

3) ENTIRE AGREEMENT

- A)** Except as expressly provided in this Agreement, this Agreement constitutes a complete statement of the agreement between **TTI** and the Customer with respect to supply of any Products or Services, despite any provisions to a contrary effect in any of the Customer's order forms or other documents.
- B)** If the Customer is also a Reseller, then the Reseller Terms & Conditions:
 - i)** apply to the purchase of Products by the Customer; and
 - ii)** override the terms in this Agreement to the extent of any unavoidable inconsistency.
- C)** Upon acceptance, this Agreement shall

supersede all prior arrangements written or oral between the Customer and **TTI** in relation to the ongoing provision of Products and Services to the Customer.

- D)** **TTI** may vary or amend this Agreement by written notice to the Customer at any time. Any variations so made will only apply to Orders placed by the Customer after the time that the variation has been brought to the Customer's attention.
- E)** No variations or modifications of any term of the Agreement shall be binding unless agreed to in writing by **TTI**.
- F)** This Agreement shall not be modified or varied by the acknowledgement, receipt or acceptance by **TTI** of a purchase order form or other document containing terms and conditions put forward by the Customer.
- G)** Unless otherwise agreed in writing, any Products or Services supplied by the **TTI** are part of an ongoing supply under this Agreement.

4) TERM OF AGREEMENT

This Agreement as varied or amended from time to time in accordance with clause 2(d) above shall apply to all dealings between the Customer and **TTI** until it is replaced by an alternate written agreement signed by the Customer and **TTI** or is otherwise terminated by the parties in accordance with its terms or with the general law.

5) SUPPLY OF THE PRODUCTS AND SERVICES

- A)** The Customer may Order from **TTI** from time to time such quantities of Products and Services it requires, with Orders to be in such format (whether written or otherwise) as **TTI** may require.

B) Whilst **TTI** will use its best endeavours to ensure that it is able to provide Products and Services to the Customer when required, it does not warrant or guarantee that it will be able to do so and will not be responsible for any losses alleged to have been suffered by the Customer as a result of failure to supply or delay in supplying Products or Services, regardless of the reason for the failure to supply.

C) **TTI** retains the absolute discretion at all times to refuse to accept any Order made by the Customer for Products or Services, including but not limited to circumstances where Products are unavailable for any reason, the Customer has failed to make payment for previous Orders or payment has been made outside payment terms or where the Customer is otherwise in breach of this Agreement.

D) Any errors made by **TTI** in computations, typing or otherwise of any part of the quotation, offer, invoice, delivery docket, or any other form of communication with the Customer shall be subject to correction by **TTI** and the Customer agrees to be bound by any such correction.

E) Products are not sold on a consignment basis unless **TTI** specifically agrees in writing to do so.

6) DELIVERY

A) Unless agreed in writing by **TTI**, the Customer shall be responsible for collecting any Products from the **TTI** outlet nominated by **TTI**. Any date provided by **TTI** as an indication of likely availability of any Products shall be an estimate only and shall not in any circumstances be incorporated in to any agreement between the parties.

B) In the event that **TTI** agrees to provide Delivery of the Products, **TTI** may select any carrier in its absolute discretion as it sees fit and engage such carrier on such terms as **TTI** in its absolute discretions sees fit.

C) Any period or date for delivery of Product or Services stated by or on behalf of **TTI** shall be regarded by the Customer as an estimate only and not a contractual commitment or representation which may be relied upon. **TTI** shall not be liable therefore for any delays or inability to deliver any Products or Services.

D) **TTI** shall be entitled to deliver Products in instalments and the Customer shall not be entitled to terminate or cancel the Order or to any claim, loss or damage howsoever arising from any failure by **TTI** to deliver any instalments on or before the estimated date of Delivery.

E) The Customer acknowledges that **TTI** may at its discretion engage and or utilise agents or subcontractors in the provision or Delivery of Products and Services to the Customer.

7) SITE REQUIREMENTS

A) The Customer shall provide suitable and practical means of access to the Site and ensure that the Site is suitable to allow the efficient and safe delivery of Products and Services. In the event that the Site is unsafe for Delivery, **TTI** reserves the right to refuse to deliver the Products and the Customer shall be charged for all expenses (if any) incurred as a result of an unsafe Site including but not limited to the cost of **TTI** delivering to another Site.

B) The Customer shall advise **TTI** in advance of Delivery if there are any potential hazards, risks or difficulties which may be encountered either at, or close to, the Site including but not limited to narrow roads, low hanging electrical wires, traffic islands and a lack of parking. **TTI** reserves the right to refuse to deliver to the Customer at a Site designated by the Customer in the event that it is unsuitable and it will be the Customer's responsibility to provide an alternative suitable location for Delivery and the Customer shall be liable to **TTI** for all expenses or losses (if any) incurred as a result of such a change.

C) The Customer must provide and operate

any machinery required to offload any Products at the Site in a safe and timely manner and in the event Customer authorises or requires TTI to operate any machinery at the Site, TTI does not take or accept any responsibility for the machinery and all risk and liability in and relating to the machinery remains with the Customer at all times.

D) For the sake of certainty and without limiting any other clause in this Agreement, the Customer:

- i)** shall not be entitled to cancel its Order in the event that the Delivery is not made pursuant to this clause 7; and
- ii)** acknowledges that any amount charged by TTI for Delivery to the Site originally nominated by the Customer will still be charged where TTI is unable to access the Site and that TTI shall be entitled to charge additional reasonable amounts where the Site is changed due to TTI refusing to deliver to the Site nominated at the time of the Order in accordance with this Agreement or if through no fault of TTI, time delays in delivering the Products occur at the Site.

E) Delivery shall be kerbside to the address of the Site unless otherwise agreed between the parties. In the event that Delivery is within the Site, (that is, beyond the kerbside), the Customer accepts all responsibility and liability for any damage, loss, injury or claim of any sort which results from TTI being instructed to deliver the Products within the Site including where such damage, loss, injury or claim is made/ suffered by TTI. TTI shall be entitled to charge additional reasonable amounts in respect to delays caused in accessing the site including but not limited to by reason of induction requirements.

F) The Customer warrants that it is the owner of the Site, or, if it is not, that it is authorised by the owner to allow for Services being performed at the Site and/or for Products to be installed or delivered to the Site.

G) The Customer shall ensure that either the Customer or the Customer's agent are present at the time of the Delivery to receive the Products or Services. In the event that the Customer or the Customer's agent are not present but have consented to TTI delivering the Products or Services in their absence, the Customer acknowledges that without limiting the application of any other terms of this Agreement, clause 15a) of this Agreement applies to such deliveries.

H) TTI shall not be obliged to obtain a signed receipt or other acknowledgment of Delivery. However, if a signed receipt or other acknowledgment of Delivery is obtained by a person at the place of delivery who appears to be authorised by the Customer to sign or otherwise take Delivery, then, to the extent permitted by law, such signed receipt or other acknowledgment shall be conclusive evidence of Delivery, the quantity of Products delivered and otherwise compliance with the Order.

I) The Customer shall ensure that any other parties performing works at the Site do not interfere with or otherwise hinder TTI's provision of Products or Services. In this regard the Customer shall provide to TTI any information reasonably required by it in respect to the activities or proposed activities of any other party performing works at the Site.

J) At no time does TTI take or accept any responsibility for the Site and all risk and liability in and relating to the Site remains with the Customer at all times.

8) PRODUCT SUITABILITY

The Customer acknowledges and agrees that:

A) Products will not necessarily be suitable for a given location, property type, use or purpose;

B) It will not purchase Products from TTI unless it has, prior to placing any Order, assessed whether it needs to obtain specific advice

from a suitably qualified professional as to the desirability of using the relevant Product –

- i) in the location;
- ii) at the time;
- iii) under the conditions;
- iv) for the purpose; and
- v) in the manner,

that it is proposed the Product will be used.

C) In utilising any Product purchased from **TTI**, the Customer will follow accepted industry best practices and seek and follow suitable professional advice at all times.

9) PRICING AND PAYMENT

A) The Customer agrees that in return for **TTI** supplying Products or Services, the Customer shall be charged the recommended retail price for the Products and Services as set out in **TTI's** Price List as it applies at the time of the Customer placing an Order for Products and or Services unless:

- i) the Customer is a Reseller and the Reseller Terms and Conditions apply to the Order; or
- ii) the parties agree on another price in writing prior to the supply of the Products or Services.

B) If a Product or Service does not appear on the Price List, or if the Price List does not or ceases to exist, then **TTI** shall be entitled to charge a reasonable amount for those Products or Services.

C) The Customer acknowledges that the Products and Services and the prices in the Price List may be modified by **TTI** from time to time without notice throughout the currency of this Agreement and it shall be the responsibility of the Customer to check with **TTI** as to the

availability and price of any particular Product immediately prior to placing any Order.

D) Unless otherwise agreed in writing payment will be due:

- i) where **TTI** has approved credit for the Customer and the cost of any Products and Services ordered by the Customer, plus the cost of any Products or Services previously ordered by the Customer for which payment is outstanding, does not exceed the credit limit approved for the Customer, 30 days from the end of the month of any tax invoice issued by **TTI** to the Customer; or otherwise
- ii) upon **TTI** accepting an order for the Products or Services.

E) Unless otherwise agreed in writing, in addition to the price of any Products or Services, the Customer shall pay any costs in relation to the Delivery of any Products or Services to the Site.

F) **TTI** may, at its sole discretion.

- i) Provide credit to the Customer for Products or Services up to a nominated amount;
- ii) Require payment from the Customer for the Products or Services at the time of pick up / Delivery; or
- iii) Require payment from the Customer for the Products or Services prior to the Products or Services being Ordered by **TTI**.

G) **TTI** shall be free at any time, at its sole discretion, to revoke payment terms in regard to any future Orders and require payment in advance of supply of further Product or Services.

H) Payment by any form other than cash is not deemed to have been made unless and until the proceeds have been cleared, honoured or recognised into **TTI's** account.

I) **TTI** may at its sole discretion receive payment by way of credit card.

J) All prices are in Australian Dollars (AUD) and unless otherwise stated quotes for Products, Services or Delivery are exclusive of GST and any other applicable taxes or duties. In addition to the price for the Products and Services the Customer shall also pay any applicable GST, taxes or duties.

K) Any quotation provided by **TTI** to the Customer shall, unless otherwise stated in the quotation, be valid only for 7 days from the time it was made and may be withdrawn at any time by **TTI** within that period and is only an invitation to the Customer to place an Order.

L) Any payments received by **TTI**, may be applied by **TTI** to any components of the amounts owed to **TTI** by the Customer in whatever order **TTI** elects in its absolute discretion, including but not limited to, allocating sums received in full payment of any interest owed prior to allocating such sums to any other components.

M) In respect of payments required to be made by the Customer under this Agreement time shall be of the essence.

N) The Customer consents to **TTI** obtaining from a credit reporting agency, a report containing the Customer's personal credit information in relation to the Customer's credit worthiness and credit history

O) Where more than one Customer has entered into this Agreement, the Customers shall be jointly and severally liable for the Customers' obligations under this Agreement.

10) BREACH BY CUSTOMER

A) If any payment in respect of the sale of Products or Services is not made in full within the agreed period:

i) any amounts owing by the Customer to **TTI** pursuant to this Agreement will become immediately due and payable and **TTI** will be entitled to demand and receive immediate payment of any such amounts; and

ii) **TTI** is entitled to recover possession of all Products to which it has retained title under clause 12.

B) Interest shall be payable on any amounts outstanding outside payment terms by the Customer to **TTI** from the date of the invoice at the rate of 8% over and above the cash rate set from time to time by the Reserve Bank of Australia.

C) **TTI** shall be free to suspend or cancel any Order in circumstances where the Customer has failed to make any payment within the payment terms.

D) The Customer hereby indemnifies **TTI** in respect of losses, expenses and costs incurred by **TTI** (including but not limited to legal costs on a solicitor/client basis) as a result of any breach of this Agreement by the Customer, including any breach of terms of payment for Products or Services. Such costs include but are not limited to the costs of any demands made of the Customer to remedy any breach, and any legal proceedings to recover unpaid money.

11) SET-OFF

A) The Customer shall have no right of set-off in any suit, claim or proceeding brought by **TTI** against the Customer for default in payment.

B) The Customer acknowledges that **TTI** may produce this clause in bar of any proceeding for set-off.

12) RETENTION OF TITLE TO GOODS

Until **TTI** receives full payment (in the form of clear funds) for any Products supplied by it to the Customer together with any other amounts owing by the Customer to **TTI**

A) title and property in all of the Products yet to be paid for remains vested in **TTI** and does not pass to the Customer;

B) the Customer must hold the Products as bailee for **TTI**;

C) where practicable the Products shall be kept separate and identifiable;

D) **TTI** may give notice in writing to the Customer to return the Products or any of them to **TTI**. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Products shall cease;

E) **TTI** shall have the right of stopping the Products in transit whether or not delivery has been made

F) the Customer must hold the proceeds of any sale or disposal of the Products on trust for **TTI** and must not deal with the money of **TTI** in any way which may be adverse to **TTI**;

G) the Customer shall not charge the Products in any way nor grant nor otherwise give any interest in the Products while they remain the property of **TTI**;

H) **TTI** can issue proceedings to recover the price of the Products sold notwithstanding that ownership of the Products may not have passed to the Customer;

I) until such time that ownership in the Products passes to the Customer, if the Products are converted into other goods or products the parties agree that **TTI** will be the owner of such other goods or products; and

J) in addition to its rights under the PPSA **TTI** may without notice, enter any premises where it suspects that the Products are and remove them, and for this purpose the Customer irrevocably licenses **TTI** or its agents to enter onto such premises and also indemnifies **TTI** from and against all costs, claims, demands or actions by any party arising from such action.

13) SECURITY

A) For the purposes of the PPSA:

i) terms used in this Agreement have the corresponding meaning to their use in the PPSA;

ii) this Agreement constitute a Security Agreement between **TTI** and the Customer and **TTI** has a Purchase Money Security Interest in all present and future Products supplied by **TTI** to the Customer and the proceeds of those Products;

iii) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer to **TTI** at any particular point in time; and

iv) by entering into this Agreement the Customer agrees to grant to **TTI** a Security Interest in the Products and **TTI** shall be entitled to register the Security Interest on the relevant Security Register

B) The Customer must do whatever shall be necessary in order to give a valid Security Interest over the Products and their proceeds which is able to be registered by **TTI** on the Personal Property Securities Register. Without limiting the Customer's obligations under this clause, the Customer must immediately upon **TTI's** request:

i) execute all documents and do any other things necessary to give effect to the security interest created under these terms; and

ii) provide any further information (such information to be complete, accurate and

up-to-date in all respects) which **TTI** may reasonably require to:

- a)* register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register
- b)* register any other document required to be registered by the PPSA; or
- c)* correct a defect in a statements referred to in subclause A or B of this clause; and

iii) procure from any person considered by **TTI** to be relevant to its security position such Agreements and waivers as **TTI** may require at any time.

C) The security interest arising under this clause attaches to the Products when the Products are collected from or dispatched from **TTI**'s premises and not at any later time.

D) **TTI** shall be free to allocate sums received from the Customer in any manner **TTI** determines, including in any manner required to preserve any Purchase Money Security Interest or any other security interest it has arising by virtue of supply of Products to the Customer.

E) The Customer undertakes to:

- i)* indemnify, and upon demand reimburse, **TTI** 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 Products charged thereby;
- ii)* not register a financing statement in respect of a security interest without the prior written consent of **TTI**;
- iii)* not register, or permit to be registered, a financing a statement or a financing change statement in relation to the Products in favour of a third party without the prior written consent of **TTI**; and
- iv)* immediately advise **TTI** of any material change in its business practices which would result in a change in the nature of the proceeds derived from such sales.

F) The Customer, agrees that it will, if called upon at any time by **TTI** to do so, procure from any one or more of its directors or other interested party (as directed by **TTI**) a personal guarantee and or indemnity of the Customer's obligations pursuant to this Agreement in a form acceptable to **TTI**, with such guarantee to cover both future liabilities and any liabilities of the Customer to **TTI** which predate the signing of the guarantee

14) CONTRACTING OUT OF PPSA

A) The Customer:

i) waives its right under section 157 of the PPSA to receive a copy of the verification statement verifying registration of a financing statement or a financing change statement relating to a Security Interest created under this Agreement; and

ii) waives its right to receive any other notice or statement under any other provision of the PPSA (including for the avoidance of doubt, any of the provisions specified in paragraph 14b)).

B) To the fullest extent permitted by the PPSA, the parties agree to the contract out of sections 95, 96, 115, 117, 118, 120, 121, 125, the second sentence of section 126(2), sections 129(2), 129(3), 130, 132, 135, 142 and 143, which sections (or parts of sections) shall not apply

15) RISK, INSURANCE AND LIABILITY

A) The risk in the Products and all insurance responsibility for theft, fire or damage of any other kind shall pass to the Customer immediately upon Delivery of the Products (including but not limited to Delivery to the Customer's agent or carrier) or upon collection by the Customer from the point of sale (including but not limited to collection by the Customer's agent or carrier)(whichever is applicable),

regardless of whether there is any further work to be completed by **TTI** in regard to those Products.

B) To the extent that title to any Products remains with TTI pursuant to clause 12 of this Agreement, the Customer must note the interest of **TTI** on any insurance policy in relation to the Products.

C) **TTI** makes no warranties or representations, either expressed or implied as to the merchantability, suitability or fitness for a particular purpose or otherwise with respect to the Products or Services other than as implied by law and which may not be excluded, restricted or modified.

D) All implied guarantees, warranties and conditions are excluded to the maximum extent permitted by law.

E) To the maximum extent permitted by law, **TTI** is not liable for:

- i)** any loss or damage to the Products resulting from any action or omission on the part of **TTI**, or the employees, contractors or agents of **TTI**; or
- ii)** any special, consequential, direct or indirect loss and damage incurred by the Customer.

F) If **TTI** is liable for a breach of a guarantee implied by the ACL in respect to the provision of the Products or Services then, to the extent permitted by the ACL, its liability to the Customer will be limited to –

- i)** the replacement of the Products or the supply of equivalent Products;
- ii)** the repair of the Products;
- iii)** the payment of the costs of replacing the Products or acquiring equivalent Products;
- iv)** the supplying of the Services again; or
- v)** the payment of the cost of having the Services supplied again.

G) If the Official Collateral provided to, or accessed by, the Customer prior to the purchase of a particular Product contains any express warranty for that Product, then:

- i)** subject to Clauses 15(i), 15(j), and 15(k) below, **TTI** will honour that express warranty; and
- ii)** the express warranty is provided in addition to the non excluded warranties or guarantees that are implied by law, and does not replace or limit those warranties or guarantees.

H) If the Official Collateral does not specify the full extent and nature of the express warranty, then (to the extent not specified) the express warranty:

- i)** covers both defects in materials and workmanship;
- ii)** entitles the Customer to (at **TTI**'s option) have any defective part or (if necessary) the entire Product repaired or replaced by **TTI** without charge for the repair or replacement;
- iii)** does not cover the costs of transportation, service calls, or clean-up time
- iv)** is for the period of one year from the date of sale to the Customer, unless the Product is used for rental purposes, in which case it is for the period of 90 days from the date of sale to the Customer.

I) **TTI** is under no obligation to honour any express warranty unless the Customer:

- i)** provides proof of purchase (whether by providing proof of warranty registration, receipt from the purchase, or otherwise); and
- ii)** makes the relevant products available to us for inspection by returning them to us, and (if requested to do so) by making them available for inspection by us on site beforehand;
- iii)** returns any defective Products or parts to **TTI**;

- a) at its expense; and
- b) accompanied by a Return Goods Note (available by contacting Product Support on 1800 816 277 or emailing ProductSupport@tti.com.au).

J) To the extent permitted by law, **TTI** is under no obligation to honour any warranty or guarantee (whether express or implied) if:

- i) the Customer repairs or modifies (or procures the repair or modification of) the relevant Product without authorisation from **TTI**;
- ii) the Customer uses any non-genuine parts, or permits any non-genuine parts to be used, with the relevant Product;
- iii) the Customer fails to follow instructions (including safety instructions) and warnings in any Official Collateral;
- iv) the damage was caused by improper maintenance, improper use, incorrect mounting, accidents (including accidents caused by negligence), or abuse of the Product.

K) The Customer acknowledges that no express warranty provided by **TTI**:

- i) covers any Third-Party Products; and
- ii) involves **TTI** assuming responsibility for any express warranty provided by the manufacturer of any Third-Party Products.

L) Notwithstanding Clause 15(i)(ii) above, **TTI** will provide reasonable information and assistance required to enable the Customer to take advantage of any manufacturer's express warranty.

M) **TTI** will not be liable for any loss, damage, costs or claim that arises as a result of the Customer's failure to use any Product for its appropriate or recommended use or in accordance with any Product handbook or where the Customer is in breach of its

obligations under clause 8. The Customer hereby indemnifies **TTI** in relation to any loss, damage, costs or claim in connection with any such use of any Product.

N) In the event that the Customer provides any design or mould to **TTI** or orders any custom made Product from **TTI**, the Customer will remain responsible for the design or any mould provided by the Customer to **TTI** and **TTI** will not be liable for any defect, loss, damages, costs or claim in relation to any design or mould. The Customer hereby indemnifies **TTI** in relation to any claim, loss, costs or damages incurred by **TTI** in connection to any design or mould provided by the Customer to **TTI**.

16) CUSTOMER'S WARRANTIES

The Customer warrants that:

A) Any financial information **TTI** may require the Customer to give is true and accurate and the Customer will keep **TTI** informed of any material adverse change.

B) the Customer shall advise **TTI** forthwith if it ceases trading or if it commences to trade through a different entity or if there is a material change in its ownership or control.

17) CANCELLATION OF ORDERS

A) No purported cancellation, variation or suspension of an Order for Products or Services (or any part of an Order for Products or Services) shall be binding upon **TTI** once the Order has been placed with **TTI** unless accepted in writing by **TTI**.

B) In the event that the Customer cancels an order or requests that part of an order be suspended for a period of 30 days or more **TTI** shall be entitled to payment for the proportion of

the Products or Services supplied at the time of the cancellation or request for suspension.

18) INTELLECTUAL PROPERTY

The Customer agrees and warrants that no patent, copyright, trademark, design or any other right is or will be infringed by reason of **TTI** accepting and carrying out the order and the Customer agrees to indemnify **TTI** against all losses, costs, expenses of whatever nature suffered or incurred by **TTI** in connection with any claim, action or proceeding by a third party.

19) CONFIDENTIAL INFORMATION

A) The Customer will keep the Confidential Information secret and confidential and not disclose it or any part thereof without the express authority of **TTI**. This obligation of confidence does not extend to any information which forms part of the public domain or enters the public domain other than by reason of default on the part of the Customer.

B) The Customer will only use the Confidential Information for the purpose of purchasing the Products and Services as contemplated by this Agreement.

C) The Customer will not reproduce any part of the information in any form other than with the express authority of **TTI**.

20) FORCE MAJEURE

TTI shall not be liable in any manner whatsoever to the extent that it has been prevented from performing any obligation under this Agreement by reason of matters beyond its control, including without limitation-

A) inability to source Products;

B) inability to access the Site, **TTI's** premises, part of the Site or part of **TTI's** premises;

C) lack of access to electricity or other required resources at the Site or **TTI's** premises;

D) lack of availability for whatever reason of staff or contractors;

E) acts of God, fire, flood, accidents or machinery breakdown, theft, riot;

F) internal disturbance, lock-outs,

G) pandemic or epidemic;

H) acts or threats of terrorism or war; or

I) industrial disputes or strikes.

21) DISPUTE RESOLUTION

A) No party has the right to commence proceedings in any court against another without first complying with the obligations in this Clause 21.

B) Any dispute between the parties which arises under this Agreement (including a dispute relating to a breach or the termination of this Agreement) must be determined in accordance with this clause 21 unless the .

C) Any party may give notice in writing to the other (a "**Notice of Dispute**") which briefly sets out the nature of the dispute, including the alleged facts upon which it is based, and the resolution or remedy being sought.

D) The Parties must use their best efforts to resolve the issues set out in each Notice of Dispute through good faith negotiation.

E) If the dispute is not resolved within 14 days of the Notice of Dispute being delivered, then – subject to clause 21(F) below – the parties agree to refer the dispute to arbitration by the

Resolution Institute. Unless otherwise agreed by the parties in writing, the arbitration must be:

- i) administered by the Resolution Institute in accordance with, and subject to, the Resolution Institute Arbitration Rules which are most current at the time the matter is referred for arbitration; and
- ii) conducted in Melbourne, Victoria.

F) The parties may refer any dispute to mediation rather than arbitration pursuant to clause 21(e) above. The mediation –

- i) must be conducted by a mediator who is independent of the Parties, and appointed –
 - a) with their agreement; or (failing agreement within 14 days of the Notice of Dispute
 - b) by a person appointed by the Chair of the Resolution Institute or the Chair's designated representative; and
- ii) must be conducted in accordance with, and subject to, the Resolution Institute Mediation Rules which are most current at the time the matter is referred for mediation;
- iii) must be conducted in Melbourne, Victoria unless the parties agree otherwise; and
- iv) may be terminated at any stage by either party by notice in writing to the other and referred to arbitration under clause 21(e) above.

22) WAIVER

Any failure or delay by **TTI** to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. The rights of **TTI** under this agreement are cumulative and not exclusive of any other rights that **TTI** may have under statute or by virtual common law.

23) READING DOWN OF AGREEMENT

If a clause in this Agreement is unenforceable it must be read down so as to be enforceable or, if it cannot be so read down, it must be severed from this Agreement without affecting the enforceability of the remaining terms of the Agreement.

JURISDICTION

This Agreement shall be governed by the laws of Victoria, Australia, and (subject to clause 21 above) the parties submit to the jurisdiction of:

- A)** courts based in Melbourne, Victoria (including the Melbourne Registry of the Federal Court of Australia); and
- B)** courts outside of Victoria which may hear appeals from Victorian courts.

24) PRIVACY POLICY

The Customer acknowledges having been made aware of **TTI's** privacy policy, a copy of which is available online at – www.tti.com.au