

**1. Definitions**

- 1.1 “David Gill” means David Gill Greenhouses Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of David Gill Greenhouses 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 David Gill 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 for the Goods as agreed between David Gill and the Customer in accordance with clause 4 below.

**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 David Gill’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and David Gill.
- 2.3 The Customer accepts and acknowledges that where the Customer is a recognised proprietary limited company then all directors of said company agree to enter into independent personal guarantees immediate upon acceptance of the quotation. The Personal Guarantee documents need to be completed prior to commencement of the Services.
- 2.4 The Customer warrants that it has the power to enter into this agreement and is the registered proprietor of the land or that they are the registered lease holder of the land and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it. The Customer agrees to provide David Gill with a copy of the lease and/or the written consent of the landlord in respect of works that are to be carried out on leased prior to commencement of the Services.
- 2.5 David Gill constructions of the Greenhouse must be on cleared, levelled blocks of land, such site levelling unless otherwise agreed, will be undertaken at the Customer’s own cost. Furthermore, it is agreed the site levelling must be within 10 mm of the specified fall of land half a cm per metre fall.

**3. Change in Control**

- 3.1 The Customer shall give David Gill 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 David Gill as a result of the Customer’s failure to comply with this clause.

**4. Price and Payment**

- 4.1 At David Gill’s sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by David Gill to the Customer; or
  - (b) David Gill’s quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 David Gill 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, poor weather conditions, limitations to accessing the site, accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, change of design, hidden pipes and wiring in walls etc) which are only discovered on commencement of the Services; or
  - (d) hard rock barriers below the surface (hard rock meaning any hole that takes more than ten (10) minutes to dig with a mechanical auger, any hold that has to be relocated due to the auger hitting rock and moving off centre and any hole which must have floating rocks dug out by hand so that the auger can proceed which takes more than ten (10) minutes to dig; or
  - (e) in the event of increases to David Gill 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) which are beyond David Gill’s control.
- 4.3 At David Gill’s sole discretion a deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by David Gill, 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 David Gill’s payment schedule;
  - (d) the date specified on any invoice or other form as being the date for payment;
  - (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 David Gill.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Customer and David Gill.

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4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to David Gill an amount equal to any GST David Gill must pay for any supply by David Gill 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.

### 5. Delivery of Goods

- 5.1 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 David Gill’s address; or
  - (b) David Gill (or David Gill’s nominated carrier) delivers the Goods to the Customer’s nominated address even if the Customer is not present at the address.
- 5.2 At David Gill’s sole discretion the cost of delivery is included in the Price.
- 5.3 Subject to clause 5.4 it is David Gill’s responsibility to ensure that the Services start as soon as it is reasonably possible.
- 5.4 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that David Gill claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Seller’s control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
  - (b) advise delays with shipping/transport of materials to the site; or
  - (c) delays caused by the Customer’s own tradesmen; or
  - (d) have the site ready for the Services; or
  - (e) notify David Gill that the site is ready.
- 5.5 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then David Gill shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.6 David Gill 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.
- 5.7 Any time or date given by David Gill to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and David Gill will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

### 6. Risk

- 6.1 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.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, David Gill is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by David Gill is sufficient evidence of David Gill’s rights to receive the insurance proceeds without the need for any person dealing with David Gill to make further enquiries.
- 6.3 Where the Customer has supplied Goods for David Gill to complete the Services, the Customer acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. David Gill shall not be responsible for any defects in the Services, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of materials supplied by the Customer.

### 7. Concreting Risk

- 7.1 The Customer acknowledges that the curing time for concrete can be affected by elements such as temperature or the weather as such David Gill offers no guarantee as to the length of time the curing process will take.
- 7.2 The Customer accepts and acknowledges that where David Gill is required to pour concrete upon soil filled areas that David Gill offers no guarantee against cracking of concrete in the event of any movement that may arise from settlement expansion or contraction of the base material). The Customer agrees to indemnify and keep indemnified David Gill from any damage or loss that may occur
- 7.3 Where David Gill gives advice or recommendations to the Customer, or the Customer’s agent, regarding the suitability of the worksite for the laying of concrete slabs, foundations or similar works and such advice or recommendations are not acted upon then David Gill shall require the Customer or their agent to authorise commencement of the Services in writing. David Gill shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 7.4 The Customer shall supply an area suitable for washing out the Supplier’s equipment and for depositing all unused concrete and slurry.

### 8. Customer’s Acknowledgements & Responsibilities

- 8.1 It is the Customer’s responsibility to;
- (a) prior commencement of the Services notify David Gill in writing as to whether the Greenhouse is to be built over existing crops. In the event the Customer does not inform David Gill, then David Gill reserves the right to vary the original quote for the Services to incorporate the additional cost in accordance with clause 4.2;

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- (b) ensure the worksite has been laser levelled prior to commencement of the Services. In the event that sand fill is required, all costs associated with product and labour will be borne by the Customer;
  - (c) to provide David Gill, while at the site, accommodation for the construction crew with adequate access to available water, electricity, toilet and washing facilities; and
  - (d) have all areas clean and clear to enable scheduled work to be completed in accordance with the schedule of installation; and
  - (e) in the event asbestos or any other toxic substances are discovered at the worksite to ensure the safe removal of the same. The Customer further agrees to indemnify David Gill against any costs incurred by David Gill as a consequence of such discovery. Under no circumstances will David Gill handle removal of asbestos product.
- 8.2 If wall plastic has to be laid out on mud or dusty soil, David Gill construction crew will take all care during installation to ensure that the inside of the plastic is free from mud and dust. If the Customer requires any such materials to be washed from the film it will be charged as a variation in accordance with clause 4.2. It is the responsibility of the Customer to ensure the excess tail of plastic on the walls is adequately covered.
- 8.3 The Client acknowledges and accepts that:
- (a) where the covering of the Greenhouse is undertaken at a temperature below 15 degrees Celsius, David Gill will tension the plastic covering as tightly as possible, however, the plastic covering may be subject to loosening in hot weather. In the event that tightening is required, the cost of engaging David Gill to do so will be borne by the Customer; and
  - (b) if the plastic covering of the Greenhouse is to be completed at a date determined by the Customer and if such work is requested to be undertaken during inclement weather against David Gill's recommendations, then David Gill does not guarantee that the plastic covering will be at the correct tension nor wrinkle-free. If the cover is lost and/or destroyed whilst covering the Greenhouse in inclement weather, then the Customer agrees to indemnify David Gill all replacement costs incurred with replacing the plastic cover.
- 8.4 David Gill will not responsible for the removal of rubbish from or clean-up of the building/constructions site/s. This is the responsibility of the Customer or the Customer's agent.

### 9. Storage of Materials

- 9.1 If David Gill notifies the Customer that it intends to store onsite Goods, plant, equipment or tools to be used in performance of the Services, then the Customer shall designate an area for storage and shall take all reasonable precautions to protect such items against destruction, damage, or theft. In the event that such items are destroyed, damaged or stolen then the cost of replacement shall be added to the contract Price and will be shown as a variation as per clause 4.2.

### 10. Other Tradesmen

- 10.1 It shall be the Customer's responsibility to arrange for all other licenced tradesmen as required (including Electrician, Plumbers, Gas Fitters) unless otherwise agreed between David Gill and the Customer at that time of the quotation.
- 10.2 The Customer agrees to indemnify David Gill from any damage caused to David Gill's Services by any other tradesmen during or after the provision of Services.

### 11. Access

- 11.1 The Customer shall ensure that David Gill has clear and free access to the work site at all times to enable them to undertake the works. David Gill 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 David Gill.

### 12. Underground Locations

- 12.1 Prior to David Gill commencing any work the Customer must advise David Gill of the precise location of all underground services on the site and clearly mark the same. The underground mains & 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.
- 12.2 Whilst David Gill will take all care to avoid damage to any underground services the Customer agrees to indemnify David Gill 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 12.1.

### 13. Title

- 13.1 David Gill and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid David Gill all amounts owing to David Gill; and
  - (b) the Customer has met all of its other obligations to David Gill.
- 13.2 Receipt by David Gill 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.
- 13.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 13.1 that the Customer is only a bailee of the Goods and must return the Goods to David Gill on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for David Gill and must pay to David Gill the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.

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- (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 David Gill and must pay or deliver the proceeds to David Gill 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 David Gill and must sell, dispose of or return the resulting product to David Gill as it so directs.
- (e) the Customer irrevocably authorises David Gill to enter any premises where David Gill believes the Goods are kept and recover possession of the Goods.
- (f) David Gill 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 David Gill.
- (h) David Gill may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

### 14. Personal Property Securities Act 2009 (“PPSA”)

- 14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 14.2 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 that have previously been supplied and that will be supplied in the future by David Gill to the Customer.
- 14.3 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 David Gill 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 14.3(a)(i) or 14.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, David Gill 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 David Gill;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of David Gill;
  - (e) immediately advise David Gill 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.
- 14.4 David Gill 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.
- 14.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 14.7 Unless otherwise agreed to in writing by David Gill, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.8 The Customer must unconditionally ratify any actions taken by David Gill under clauses 14.3 to 14.5.
- 14.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 15. Security and Charge

- 15.1 In consideration of David Gill 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).
- 15.2 The Customer indemnifies David Gill from and against all David Gill's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising David Gill's rights under this clause.
- 15.3 The Customer irrevocably appoints David Gill and each director of David Gill as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer's behalf.

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

- 16.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify David Gill 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 David Gill to inspect the Goods.

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- 16.2 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**).
- 16.3 David Gill acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, David Gill makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. David Gill's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.5 If the Customer is a consumer within the meaning of the CCA, David Gill's liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.6 If David Gill is required to replace the Goods under this clause or the CCA, but is unable to do so, David Gill may refund any money the Customer has paid for the Goods.
- 16.7 If the Customer is not a consumer within the meaning of the CCA, David Gill'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 David Gill at David Gill's sole discretion;
  - (b) limited to any warranty to which David Gill is entitled, if David Gill did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 16.8 Subject to this clause 16, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 16.1; and
  - (b) David Gill 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.
- 16.9 Notwithstanding clauses 16.1 to 16.8 but subject to the CCA, David Gill 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 David Gill;
  - (e) fair wear and tear, any accident, or act of God.
- 16.10 Notwithstanding anything contained in this clause if David Gill is required by a law to accept a return then David Gill will only accept a return on the conditions imposed by that law.

### 17. Intellectual Property

- 17.1 Where David Gill has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of David Gill.

### 18. Default and Consequences of Default

- 18.1 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 David Gill's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Customer owes David Gill any money the Customer shall indemnify David Gill from and against all costs and disbursements incurred by David Gill in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, David Gill's collection agency costs, and bank dishonour fees).
- 18.3 Without prejudice to any other remedies David Gill may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions David Gill may suspend or terminate the supply of Goods to the Customer. David Gill will not be liable to the Customer for any loss or damage the Customer suffers because David Gill has exercised its rights under this clause.
- 18.4 Without prejudice to David Gill's other remedies at law David Gill shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to David Gill shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to David Gill becomes overdue, or in David Gill's opinion the Customer will be unable to make a payment when it falls due;
  - (b) 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
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### 19. Insurance

- 19.1 David Gill shall have public liability insurance of at least \$5m. It is the Customer's responsibility to ensure that they are similarly insured.

**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. Compliance with Laws**

- 21.1 The Customer and David Gill 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.
- 21.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.
- 21.3 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.

**22. Cancellation**

- 22.1 David Gill 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 David Gill shall repay to the Customer any money paid by the Customer for the Goods. David Gill shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.2 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 David Gill as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.3 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.

**23. Privacy Act 1988**

- 23.1 The Customer agrees for David Gill to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by David Gill.
- 23.2 The Customer agrees that David Gill may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency 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.
- The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 23.3 The Customer consents to David Gill being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 23.4 The Customer agrees that personal credit information provided may be used and retained by David Gill for the following purposes (and for other purposes as shall be agreed between the Customer and David Gill or required by law from time to time):
- (a) the provision of Goods; and/or
  - (b) the marketing of Goods by David Gill, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 23.5 David Gill may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer;
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 23.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
  - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
  - (c) advice that David Gill is a current credit provider to the Customer;

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- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of David Gill, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
- (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Customer by David Gill has been paid or otherwise discharged.

### 24. Notices

- 24.1 Any written notice given under this contract shall be delivered by handing the notice to the other party in person, leaving it at the address of the other party stated in this contract, or by sending it by registered post to the address of the other party as stated in this contract, or sent by fax to the fax number of the party, or any other address which is notified by one party to the other in accordance with this contract. Any such notice or other communication takes effect from the time it is received and is taken to be received if left at the address of the party, at the time it is left, if sent by prepaid ordinary post to the address of the party, on the third day after posting and if sent by fax, upon production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number of the party without error.

### 25. General

- 25.1 The failure by David Gill to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect David Gill'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.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria in which David Gill has its principal place of business, and are subject to the jurisdiction of the Melbourne Courts in Victoria.
- 25.3 Subject to clause 16 David Gill 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 David Gill of these terms and conditions (alternatively David Gill's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 25.4 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 David Gill nor to withhold payment of any invoice because part of that invoice is in dispute.
- 25.5 David Gill may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 25.6 The Customer agrees that David Gill may amend these terms and conditions at any time. If David Gill makes a change to these terms and conditions, then that change will take effect from the date on which David Gill notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for David Gill to provide Goods to the Customer.
- 25.7 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.