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## Badger Australia – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 **“Badger”** means BGA National Pty Ltd T/A Badger Australia, its successors and assigns or any person acting on behalf of and with the BGA National Pty Ltd T/A Badger Australia.
- 1.2 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Badger to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Client is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
  - (d) includes the Client’s executors, administrators, successors, and permitted assigns.
- 1.3 **“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.
- 1.4 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 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 Client does not wish to allow Cookies to operate in the background when using Badger’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.6 **“Goods”** means all Goods or Services supplied by Badger to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.7 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.8 **“Price”** means the Price payable (plus any GST where applicable) for the Goods as agreed between Badger and the Client in accordance with clause 7 below.

### 2. Acceptance

- 2.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
  - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 This Contract constitutes the entire agreement between Badger and the Client, and the Client hereby acknowledges that no reliance is placed on any representation made by Badger that is not embodied in this Contract.
- 2.5 The Client acknowledges and accepts that:
- (a) the supply of Goods on credit shall not take effect until the Client has completed a credit application with Badger and it has been approved with a credit limit established for the account;
  - (b) in the event that the supply of Goods request exceeds the Client’s credit limit and/or the account exceeds the payment terms, Badger reserves the right to refuse delivery; and
  - (c) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Badger reserves the right to vary the Price with alternative Goods as per clause 7.2 subject to prior confirmation and agreement of both parties. Badger also reserves the right to halt all Services until such time as Badger and the Client agree to such changes. Badger shall not be liable to the Client for any loss or damage the Client suffers due to Badger exercising its rights under this clause.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW), Section 9 of the Electronic Communications Act 2000 (SA), Section 9 of the Electronic Transactions Act 2001 (ACT), Section 9 of the Electronic Transactions (Victoria) Act 2000, Section 9 of the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (TAS), Section 10 of the Electronic Transactions Act 2011 (WA), Section 226 of the Contract Commercial Law Act 2017 (NZ) (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that Badger 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 Badger 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 Badger in respect of the Services.
- 3.2 In circumstances where the Client is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not) (**“Client Error”**). The Client must pay for all Goods it orders from Badger notwithstanding that such Goods suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take Delivery of such Goods. Badger is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

### 4. Change in Control

- 4.1 The Client shall give Badger not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, change

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of trustees, or business practice). The Client shall be liable for any loss incurred by Badger as a result of the Client's failure to comply with this clause.

### 5. On-Line Ordering

- 5.1 The Client acknowledges and agrees that:
- (a) Badger does not guarantee the website's performance;
  - (b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by Badger;
  - (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
  - (d) there are inherent hazards in electronic distribution, and as such Badger cannot warrant against delays or errors in transmitting data between the Client and Badger including orders, and you agree that to the maximum extent permitted by law, Badger will not be liable for any losses which the Client suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
  - (e) when making a transaction through the website, the Client's information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by Badger and/or displayed on the website. The encryption process ensures that the Client's information cannot be read by or altered by outside influences; and
  - (f) if the Client is not the cardholder for any credit card being used to pay for the Goods, Badger shall be entitled to reasonably assume that the Client has received permission from the cardholder for use of the credit card for the transaction.
- 5.2 Badger reserves the right to terminate the Client's order if it learns that you have provided false or misleading information, interfered with other users or the administration of Badger's business, or violated these terms and conditions.

### 6. Credit Card Information

- 6.1 Badger will:
- (a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by Badger;
  - (b) not disclose the Client's credit card details to any third party; and
  - (c) not unnecessarily disclose any of the Client's personal information, except in accordance with the Privacy Act (clause 19) or where required by law.
- 6.2 The Client expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due and outstanding by the Client, Badger is entitled to immediately charge the Client'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 Client pursuant to the terms of this Contract.

### 7. Price and Payment

- 7.1 At Badger's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by Badger to the Client upon placement of an order for Goods; or
  - (b) the Price as at the date of Delivery of the Goods according to Badger's current price list, as previously disclosed to the Client upon the Client's placement of an order for Goods; or
  - (c) Badger's quoted Price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 7.2 Badger 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) if during the course of the Services, the Goods are not or cease to be available from Badger's third party suppliers, then Badger reserves the right to provide alternative Goods; or
  - (d) in the event of increases to Badger in the cost of labour or materials (including, but not limited to, where a bulk buy discount is provided by Badger and the Client subsequently reduces the quantity of Goods ordered or delays in shipment etc.) which are beyond Badger's control.
- 7.3 Badger reserves the right to change the Price if a variation to Badger's quotation is requested. Any variations to the scope of the Services or specifications of the Goods (including, but not limited to, where a bulk buy discount is provided by Badger and the Client subsequently reduces the quantity of Goods ordered etc.) will be charged for on the basis of Badger's quotation, and will be detailed in writing, and shown as variations on Badger's invoice. The Client shall be required to respond to any variation submitted by Badger within ten (10) working days. Failure to do so will entitle Badger 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.
- 7.4 Any discounts applicable to the Price shall become null and void if payment is not made by the due date stated on the invoice and/or statement.
- 7.5 At Badger's sole discretion, a reasonable deposit may be required upon placement of an order for Goods, in accordance with any quotation provided by Badger or as notified to the Client prior to the placement of an order for Goods.
- 7.6 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Badger, which may be:
- (a) at time of ordering of the Goods;
  - (b) before delivery of the Goods;
  - (c) fourteen (14) days following the date specified on any invoice or other form as being the date for payment; or
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Badger.
- 7.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Badger.
- 7.8 Badger may in its discretion allocate any payment received from the Client towards any invoice that Badger determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Badger may re-allocate any payments previously received and allocated.

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In the absence of any payment allocation by Badger, payment will be deemed to be allocated in such manner as preserves the maximum value of Badger's Purchase Money Security Interest (as defined in the PPSA) in the Goods.

- 7.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Badger nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify Badger in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as Badger investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in Badger placing the Client's account into default and subject to default interest in accordance with clause 17.1.
- 7.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Badger an amount equal to any GST Badger must pay for any supply by Badger under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set-off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 8. Delivery of Goods

- 8.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at Badger's address; or
  - (b) Badger (or Badger's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 8.2 The cost of Delivery will be payable by the Client in accordance with the quotation provided by Badger to the Client, or as otherwise notified to the Client prior to the placement of an order for Goods.
- 8.3 At Badger's sole discretion:
- (a) Badger Australia may provide free shipping and returns and the following conditions apply:
    - (i) businesses that have a registered Australian Business Number (ABN), and have ordered through Badger's website may receive free shipping;
    - (ii) retail or consumer orders shall pay a flat rate shipping fee; and
    - (iii) express shipping shall incur a shipping fee.
  - (b) the following conditions apply to returns:
    - (i) products must be in the condition the Client received them and in the original box and/or packaging;
    - (ii) a Badger Australia tax invoice, or delivery docket must be packed with the Goods;
    - (iii) all returns will need to be received and processed by the warehouse within three hundred and sixty-five (365) days of purchase; and
    - (iv) if the Goods are not returned in a resalable condition, a full refund may not apply. This includes the shoebox itself. Boots must be wrapped and/or boxed up for return.
- 8.4 Badger 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.
- 8.5 The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery.
- 8.6 Any time specified by Badger for Delivery of the Goods is an estimate only and Badger will not be liable for any loss or damage incurred by the Client because 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. If Badger is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then Badger shall be entitled to charge a reasonable fee for redelivery and/or storage.

### 9. Risk

- 9.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 9.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, Badger is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Badger is sufficient evidence of Badger's rights to receive the insurance proceeds without the need for any person dealing with Badger to make further enquiries.
- 9.3 If the Client requests Badger to leave Goods outside Badger's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.
- 9.4 In the event that the Client provides Badger with any information and/or measurements relating to the supply of the Goods, Badger shall be entitled to rely on the accuracy of any such information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Badger accepts no responsibility for any loss, damages, or costs however resulting from the supply of inaccurate measurements or other information.
- 9.5 Whilst the right to use an embroidery programme will remain with the Client, once paid for, the actual "programme" or any means of reproducing the programme will remain the sole property of Badger.
- 9.6 Where the Client supplies products, adequate quantities shall be supplied to cover spoilage. Products and other materials shall not be counted or checked when received unless requested by the Client in writing. An additional charge may be made by Badger in respect of any such counting or checking requested by the Client.
- 9.7 Whilst every care is taken by Badger to carry out the instructions of the Client, it is the Client's responsibility to undertake a final proof reading of any customised logos or text to be applied to the Goods. Badger shall accept no liability whatsoever for any errors not picked up and/or corrected by the Client in the final proof reading.
- 9.8 Badger is under no obligation to provide samples of Goods ordered other than by virtual (computerised) sample. Whilst every effort will be taken by Badger to match virtual colours with physical colours, Badger will take no responsibility for any variation between virtual sale samples and either the virtual sale sample displayed on the Client's computer and/or the final product. In the event that a physical sample is required this will be provided on request by the Client and will be charged for as an extra including return freight, the additional charge will be detailed separately in the final invoice.
- 9.9 In the case of property and materials left with Badger without specific instructions, Badger shall be free to dispose of them at the end of twelve (12) months after Badger received them and to accept and retain any proceeds gained from such disposal to cover Badger's costs in holding and handling such items, in accordance with clause 7.2.
- 9.10 The Client acknowledges and accepts that Goods supplied:

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- (a) may exhibit variations of colour and shade that are inherent in fabric dye lots. While every effort will be taken by Badger to match colour and shade of the Goods, Badger shall not be liable for any loss, damage or costs, howsoever arising resulting from any variation in colour and shading between batches of the Goods or sale samples and the final Goods supplied; and
  - (b) may experience shrinkage which is considered normal practice for these types of Goods and thereby not covered by Badger as a defect or under warranty. Badger shall not be liable for any loss or damage in this event, where circumstances are beyond the control of Badger.
- 9.11 Badger shall be under no liability whatsoever to the Client for any variation (beyond the reasonable control of Badger) in colours between the approved prototype and the finished Goods.
- 9.12 Badger shall not be held liable for inks wearing off through general wear and tear.

### 10. Specifications

- 10.1 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in Badger's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by Badger.

### 11. Compliance with Laws

- 11.1 The Client and Badger 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.

### 12. Title

- 12.1 Badger and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Badger all amounts owing to Badger; and
  - (b) the Client has met all of its other obligations to Badger.
- 12.2 Receipt by Badger of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 12.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 12.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to Badger on request;
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Badger and must pay to Badger the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Badger and must pay or deliver the proceeds to Badger on demand;
  - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Badger and must sell, dispose of or return the resulting product to Badger as it so directs;
  - (e) the Client irrevocably authorises Badger to enter any premises where Badger believes the Goods are kept and recover possession of the Goods;
  - (f) Badger may recover possession of any Goods in transit whether or not Delivery has occurred;
  - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Badger; and
  - (h) Badger may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

### 13. Personal Property Securities Act 2009 ("PPSA")

- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 13.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by Badger to the Client, and the proceeds from such Goods.
- 13.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Badger 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, Badger 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 Badger;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of Badger;
  - (e) immediately advise Badger of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales.
- 13.4 Badger and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

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- 13.7 Unless otherwise agreed to in writing by Badger, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client must unconditionally ratify any actions taken by Badger 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 Badger agreeing to supply the Goods and/or provide its Services, the Client grants Badger a security interest by way of a floating charge (registerable by Badger pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Goods and/or Services under this Contract and/or permit Badger to appoint a receiver to the Client in accordance with the *Corporations Act 2001* (Cth).
- 14.2 The Client indemnifies Badger from and against all Badger's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Badger's rights under this clause.
- 14.3 In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 12.1, 13.2 and 14.1 as applicable, is deemed insufficient by Badger to secure the repayment of monies owed by the Client to Badger, the Client hereby grants Badger a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

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

- 15.1 The Client must inspect the Goods on Delivery and must within seven (7) days of Delivery notify Badger in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Badger to inspect the Goods.
- 15.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 15.3 Badger 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, Badger offers warranties for:
- (a) an unmatched twenty-four (24) month manufacturer's warranty on all Badger Brands vests, jackets and trousers and includes manufacturing faults and/or defects (including torn seams and broken zips), but does not include general wear and tear damage; and
  - (b) all footwear the Client purchases from Badger Australia is covered by an industry leading twelve (12) month warranty. This covers any manufacturing faults (i.e. sole delamination), but does not cover general wear and tear damage (i.e. torn fabric or leather stains).
- 15.5 Further to clause 15.4, Badger's liability in respect of Non-Excluded Guarantees is limited to the fullest extent permitted by law.
- 15.6 If the Client is a consumer within the meaning of the CCA, Badger's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.7 If Badger is required to replace the Goods under this clause or the CCA, but is unable to do so, Badger may refund any money the Client has paid for the Goods.
- 15.8 If the Client is not a consumer within the meaning of the CCA, Badger'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 Client by Badger at Badger's sole discretion;
  - (b) limited to any warranty to which Badger is entitled, if Badger did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 15.9 Subject to this clause 15, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 15.1; and
  - (b) Badger has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 15.10 Notwithstanding clauses 15.1 to 15.9 but subject to the CCA, Badger shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;
  - (b) the Client using the Goods for any purpose other than that for which they were designed;
  - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Client failing to follow any instructions or guidelines provided by Badger;
  - (e) fair wear and tear, any accident, or act of God.
- 15.11 Badger may in its absolute discretion accept non-defective Goods for return in which case Badger may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 15.12 Notwithstanding anything contained in this clause if Badger is required by a law to accept a return, then Badger will only accept a return on the conditions imposed by that law.
- 15.13 Subject to clause 15.1, customised, including items that has had the Client's logo's put on, or Goods made or ordered to the Client's specifications are not acceptable for credit or return.

### 16. Intellectual Property

- 16.1 Where Badger has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Badger. Under no circumstances may such designs, drawings and documents be used without the express written approval of Badger.

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- 16.2 The Client warrants that all designs, specifications, or instructions given to Badger will not cause Badger to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Badger against any action taken by a third party against Badger in respect of any such infringement.
- 16.3 The Client agrees that Badger may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Badger has created for the Client.

### 17. Default and Consequences of Default

- 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Badger's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes Badger any money, the Client shall indemnify Badger from and against all costs and disbursements:
- (a) incurred; and/or
  - (b) which would be incurred and/or
  - (c) for which by the Client would be liable;
- in regard to legal costs on a solicitor and own client basis incurred in exercising Badger's rights under these terms and conditions, internal administration fees, Badger's Contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 17.3 Further to any other rights or remedies Badger may have under this Contract, if a Client has made payment to Badger, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Badger under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 17.4 Without prejudice to Badger's other remedies at law Badger shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Badger shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Badger becomes overdue, or in Badger's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by Badger;
  - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### 18. Cancellation

- 18.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("**the Breaching Party**") the other party may suspend or terminate the supply or purchase of Goods and/or Services to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 18.2 If Badger, due to reasons beyond Badger's reasonable control, is unable to deliver any Goods and/or Services to the Client, Badger may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Client. On giving such notice Badger shall repay to the Client any money paid by the Client for the Goods and/or Services. Badger shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 The Client may cancel Delivery of the Goods and/or Services by written notice served within forty-eight (48) hours of placement of the order. If the Client cancels Delivery in accordance with this clause 18.3, the Client will not be liable for the payment of any costs of Badger, except where a deposit is payable in accordance with clause 7.5. Failure by the Client to otherwise accept Delivery of the Goods and/or Services shall place the Client in breach of this Contract.
- 18.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will 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 Badger is Personal Information, as defined and referred to in clause 19.3, and therefore considered Confidential Information. Badger 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"). Badger acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Badger that may result in serious harm to the Client, Badger will notify the Client 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 Client by written consent, unless subject to an operation of law.
- 19.2 Notwithstanding clause 19.1, privacy limitations will extend to Badger in respect of Cookies where the Client utilises Badger's website to make enquiries. Badger 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 Client's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to Badger when Badger sends an email to the Client, so Badger may collect and review that information ("collectively Personal Information")
- If the Client consents to Badger's use of Cookies on Badger's website and later wishes to withdraw that consent, the Client may manage and control Badger's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 19.3 The Client agrees that Badger may exchange information about the Client with those credit providers and with related body corporates for the following purposes:

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- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 19.4 The Client consents to Badger being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 19.5 The Client agrees that personal credit information provided may be used and retained by Badger for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 19.6 Badger may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 19.7 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 Badger is a current credit provider to the Client;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults (provided Badger is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Badger has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of Badger, the Client has committed a serious credit infringement;
  - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.8 The Client shall have the right to request (by e-mail) from Badger:
- (a) a copy of the Personal Information about the Client retained by Badger and the right to request that Badger correct any incorrect Personal Information; and
  - (b) that Badger does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 19.9 Badger will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 19.10 The Client can make a privacy complaint by contacting Badger via e-mail. Badger will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

### 20. Service of Notices

- 20.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 20.2 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.

### 21. Trusts

- 21.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not Badger may have notice of the Trust, the Client covenants with Badger as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
  - (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be 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 Client against the Trust, the trustees and the trust fund. The Client 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 Client will not during the term of the Contract without consent in writing of Badger (Badger will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Client 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 fund or trust property.

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### 22. General

- 22.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 22.2 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, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.3 These terms and conditions and any contract to which they apply shall be governed by the laws of the state and/or territory in which the Goods and/or Services were provided by Badger to the Client however, in the event of a dispute that deems necessary for the matter to be referred to a Magistrates or higher court then jurisdiction will be subject to the courts of South Australia in which Badger has its principal place of business. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).
- 22.4 Badger may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- 22.5 The Client cannot licence or assign without the written approval of Badger.
- 22.6 Badger 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 Client agrees and understands that they have no authority to give any instruction to any of Badger's sub-contractors without the authority of Badger.
- 22.7 The Client agrees that Badger may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Badger to provide Goods to the Client.
- 22.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to Badger, once the parties agree that the Force Majeure event has ceased.
- 22.9 Both parties warrant that they have the power to enter 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.
- 22.10 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and Delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
- 22.11 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.