

1. Definitions

- 1.1 **"Acknowledgment Document"** means the document signed by the Customer in conjunction with these Terms and Conditions of Trade and applicable if the Contractor elects, whereby the Customer acknowledges the extent and effect of the provision of security the Customer provides to the Contractor in consideration of the provision of the Services.
- 1.2 **"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.
- 1.3 **"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.
- 1.4 **"Contractor"** means Enviroking Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Enviroking Pty Ltd.
- 1.5 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when using the Contractor's website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.6 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Contractor to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 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 **"Incidental Items"** means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by the Contractor in the course of it conducting, or supplying to the Customer, any Services.
- 1.9 **"Price"** means the Price payable (plus any GST where applicable) for the Services as agreed between the Contractor and the Customer in accordance with clause 6 of this Contract.
- 1.10 **"Services"** mean all Services supplied by the Contractor to the Customer at the Customer's request from time to time.

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 Customer places an order for or accepts delivery of the Services provided by the Contractor.
- 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 The Customer acknowledges and accepts that the supply of Services on credit shall not take effect until the Customer has completed a credit application with the Contractor and it has been approved with a credit limit established for the account. In the event that the supply of Services requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery.
- 2.5 In the event that the Customer requests the Contractor to:
 - (a) make an emergency call out for critical equipment after hours or causes the Contractor to cancel or reschedule other work then the Contractor reserves the right to charge a minimum call out fee of one (1) hour labour cost plus a per kilometre travelled rate plus any materials used to undertake the Services unless otherwise agreed between the Contractor and the Customer; and/or
 - (b) provide the Services urgently, that may require the Contractor's staff to work outside normal business hours (including, but not limited to, working through lunch breaks, weekends and/or public holidays) then the Contractor reserves the right to charge the Customer additional labour costs (penalty rates will apply at time and a half normal rates), unless otherwise agreed between the Contractor and the Customer.
- 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 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Customer agrees that should the Customer introduce any third party to the Contractor as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Services on the Customer's behalf and/or to request any variation to the Services on the Customer's behalf (such authority to continue until all requested Services have been completed or the Customer otherwise notifies the Contractor in writing that said person is no longer the Customer's duly authorised representative).
- 3.2 In the event that the Customer's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise the Contractor in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Customer specifically acknowledges and accepts that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor's profit margin) in providing any Services or variation/s requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

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

5. Change in Control

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

6. Price and Payment

- 6.1 At the Contractor's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by the Contractor to the Customer upon placement of an order for the Services; or
 - (b) the Contractor's quoted Price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 The Contractor reserves the right to change the Price:
- (a) a variation to the Contractor's quotation is requested; or
 - (b) any variation from the plan of scheduled Services or specifications occurs; or
 - (c) any variation as a result of additional Services required due to unforeseen circumstances; including, but not limited to, unfavourable weather conditions, limitations to accessing the site/property, safety considerations, deeper levels of contamination uncovered, unexpected delays, access to an area not being available as was agreed or when pre-arranged, discovery of hidden or unidentifiable difficulties which are only discovered following assessment, or as a result of any increase to the Contractor in the cost of materials and labour).
- 6.3 Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Customer shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by the Contractor, which may be:
- (a) on delivery of the Services; or
 - (b) before delivery of the Services; or
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Customer by the Contractor.
- 6.5 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Contractor.
- 6.6 The Contractor may in its discretion allocate any payment received from the Customer towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards.
- 6.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Contractor 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 Customer must notify the Contractor in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Contractor investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Contractor placing the Customer's account into default and subject to default interest in accordance with clause 16.1.
- 6.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for providing the Contractor's Services. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Provision of the Services

- 7.1 At the Contractor's sole discretion delivery of the Services shall take place when the Services are supplied to the Customer at the Customer's nominated address.
- 7.2 Subject to clause 7.3 it is the Contractor's responsibility to ensure that the Services start as soon as it is reasonably practicable.
- 7.3 The Services' commencement date will be extended, and the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify the Contractor that the site is ready.

Envirocking Pty Ltd – Terms & Conditions of Trade

- 7.4 Delivery of the Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this Contract.
- 7.5 Both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that the Contractor is unable to supply the Services as agreed solely due to any action or inaction of the Customer then the Contractor shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.

8. Risk

- 8.1 Irrespective of whether the Contractor retains ownership of any Incidental Items all risk for such items shall pass to the Customer as soon as such items are delivered to the Customer and shall remain with the Customer until such time as the Contractor may repossess the Incidental Items in accordance with clause 11.3(f). The Customer must insure all Incidental Items on or before delivery.
- 8.2 The Contractor reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Incidental Items as a result of the Customer's failure to insure in accordance with clause 8.1.

9. Access

- 9.1 It is the responsibility of the Customer to ensure that clear access to and from the site/property and that access is suitable to accept the Contractor's vehicles or any other equipment as may be deemed necessary by the Contractor. The Customer shall pay the cost of replacement, repair or rectification to any paths, driveways, and access routes to the site/property. The Customer shall also be liable for all costs associated with any delays due to access unless otherwise agreed.
- 9.2 Access within the site/property needs to be safe and unobstructed.
- 9.3 The Customer acknowledges and agrees that the Contractor shall have uninterrupted full access to the site/property until such time as the Services have been completed and all the Contractor's equipment has been removed.

10. Compliance with Laws

- 10.1 The Customer and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.

11. Title to Incidental Items

- 11.1 The Contractor and the Customer agree that where it is intended that the ownership of Incidental Items is to pass to the Customer that such ownership shall not pass until:
- (a) the Customer has paid the Contractor all amounts owing for the Services; and
 - (b) the Customer has met all other obligations due by the Customer to the Contractor in respect of all Contracts between the Contractor and the Customer.
- 11.2 Receipt by the Contractor 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 and until then the Contractor's ownership in the Incidental Items or rights in respect of the Services shall continue.
- 11.3 It is further agreed that, until ownership of the Incidental Items passes to the Customer in accordance with clause 11.1:
- (a) the Customer is only a bailee of the Incidental Items and must return the Incidental Items to the Contractor immediately upon request by the Contractor;
 - (b) the Customer holds the benefit of the Customer's insurance of the Incidental Items on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Customer sells, disposes or parts with possession of the Incidental Items then the Customer must hold the proceeds of sale of the Incidental Items on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand;
 - (d) the Customer should not convert or process the Incidental Items 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 the Contractor and must dispose of or return the resulting product to the Contractor as the Contractor so directs;
 - (e) the Customer shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of the Contractor; and
 - (f) the Customer irrevocably authorises the Contractor to enter any premises where the Contractor believes the Incidental Items are kept and recover possession of the Incidental Items.

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

- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2 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:
- (a) all Incidental Items previously supplied by the Contractor to the Customer;
 - (b) all Incidental Items will be supplied in the future by the Contractor to the Customer and the proceeds from such Incidental Items; and
 - (c) all the Customer's present and after acquired property being a charge, including anything in respect of which the Customer has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Customer to the Contractor for Services – that have previously been provided and that will be provided in the future by the Contractor to the Customer.
- 12.3 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 the Contractor 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 12.3(a)(i) or 12.3(a)(ii).
 - (b) indemnify, and upon demand reimburse, the Contractor 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 Incidental Items charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor; and
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items or the proceeds of such Incidental Items in favour of a third party without the prior written consent of the Contractor.
- 12.4 The Contractor 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.
- 12.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by the Contractor, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Customer must unconditionally ratify any actions taken by the Contractor under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge

- 13.1 In consideration of the Contractor agreeing to supply its Services, the Customer grants the Contractor a security interest by way of a floating charge (registerable by the Contractor 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 Customer or owned by the Customer in the future, including without limitation any assets identified in an Acknowledgment Document (if any), to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Services under this Contract and/or permit the Contractor to appoint a receiver to the Customer in accordance with the Corporations Act 2001 (Cth). The security interest arises upon the Customer's acceptance of these terms and is not conditional on the existence of any Acknowledgment Document.
- 13.2 The Customer indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 13.3 As a separate and continuing security, in the event that the Customer defaults or breaches any term of this Contract and as a result, the security provided in clauses 11.1, 12.2 and 13.1 as applicable and is deemed insufficient by the Contractor to secure the repayment of monies owed by the Customer to the Contractor, the Customer hereby grants the Contractor 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 Customer now, or owned by the Customer in the future, to secure the performance of the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The Customer must, upon request, provide all information the Contractor reasonably requires to identify and describe such property (including title particulars). This clause operates whether or not any Acknowledgment Document exists.

14. Defects, Warranties and the Competition and Consumer Act 2010 ("CCA")

- 14.1 The Customer must inspect the Contractor's Services on completion of the Services and must within seven (7) days notify the Contractor in writing of any evident defect in the Services or Incidental Items provided (including the Contractor's workmanship) or of any other failure by the Contractor to comply with the description of, or quote for, the Services which the Contractor was to supply. The Customer must notify any other alleged defect in the Contractor's Services or Incidental Items as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Contractor to review the Services or Incidental Items that were provided.
- 14.2 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**).
- 14.3 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Customer is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If the Contractor is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then the Contractor may refund any money the Customer has paid for the Services but only to the extent that such refund shall take into account the value of Services and Incidental Items which have been provided to the Customer which were not defective.
- 14.7 If the Customer is not a consumer within the meaning of the CCA, the Contractor's liability for any defective Services or Incidental Items is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by the Contractor at the Contractor's sole discretion;
 - (b) otherwise negated absolutely.
- 14.8 Notwithstanding clauses 14.1 to 14.7 but subject to the CCA, the Contractor 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 Incidental Items;
 - (b) the Customer using the Incidental Items for any purpose other than that for which they were designed;
 - (c) the Customer continuing to use any Incidental Items after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Services by the Customer or any third party without the Contractor's prior approval;
 - (e) the Customer failing to follow any instructions or guidelines provided by the Contractor; and/or
 - (f) fair wear and tear, any accident, or act of God.

15. Intellectual Property

- 15.1 Where the Contractor has designed, drawn or developed Incidental Items for the Customer, then the copyright in any Incidental Items shall remain the property of the Contractor. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.
- 15.2 The Customer warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.
- 15.3 The Customer agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any Incidental Items which the Contractor has created for the Customer.

16. Default and Consequences of Default

- 16.1 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 the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Customer owes the Contractor any money, the Customer shall indemnify the Contractor from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Customer would be liable;
- in regard to legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under these terms and conditions, internal administration fees, the Contractor'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.
- 16.3 Further to any other rights or remedies the Contractor may have under this Contract, if a Customer has made payment to the Contractor, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 16.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by the Contractor;
 - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

17. Cancellation

- 17.1 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 of 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.
- 17.2 If the Contractor, due to reasons beyond the Contractor's reasonable control, is unable to deliver any Services to the Customer, the Contractor may cancel any Contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Customer. On giving such notice the Contractor shall repay to the Customer any money paid by the Customer for the Services. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 The Customer may cancel delivery of the Services by written notice served within forty-eight (48) hours of placement of the order. If the Customer cancels delivery in accordance with this clause 17.3, the Customer will not be liable for the payment of any costs of the Contractor, except where a deposit is payable.

18. Privacy Policy

- 18.1 All emails, documents, images or other recorded information held or used by the Contractor is Personal Information, as defined and referred to in clause 18.3, and therefore considered Confidential Information. The Contractor 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"). The Contractor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Contractor that may result in serious harm to the Customer, the Contractor will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 18.2 Notwithstanding clause 18.1, privacy limitations will extend to the Contractor in respect of Cookies where the Customer utilises the Contractor's website to make enquiries. The Contractor agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Contractor when the Contractor sends an email to the Customer, so the Contractor may collect and review that information ("collectively Personal Information").

Envirocking Pty Ltd – Terms & Conditions of Trade

- If the Customer consents to the Contractor's use of Cookies on the Contractor's website and later wishes to withdraw that consent, the Customer may manage and control the Contractor's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the website.
- 18.3 The Customer agrees for the Contractor to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by the Contractor.
- 18.4 The Customer agrees that the Contractor may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 18.5 The Customer consents to the Contractor being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 18.6 The Customer agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Services; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Services.
- 18.7 The Contractor may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report; and/or
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 18.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 18.3 above;
 - (b) name of the credit provider and that the Contractor is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided the Contractor 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 Customer no longer has any overdue accounts and the Contractor has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of the Contractor, the Customer has committed a serious credit infringement; and/or
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.9 The Customer shall have the right to request (by e-mail) from the Contractor:
- (a) a copy of the Personal Information about the Customer retained by the Contractor and the right to request that the Contractor correct any incorrect Personal Information; and
 - (b) that the Contractor does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 18.10 The Contractor will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 18.11 The Customer can make a privacy complaint by contacting the Contractor via e-mail. The Contractor will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

19. Service of Notices

- 19.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission; or
 - (e) if sent by email to the other party's last known email address.
- 19.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

20. Trusts

- 20.1 If the Customer at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Customer covenants with the Contractor as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Customer 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 Customer against the Trust,

Enviroking Pty Ltd – Terms & Conditions of Trade

the trustees and the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity; and

- (c) the Customer will not during the term of the Contract without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.

21. General

- 21.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, 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.
- 21.2 These terms and conditions and any Contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts in that state.
- 21.3 The Contractor may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.
- 21.4 The Customer cannot licence or assign without the written approval of the Contractor.
- 21.5 The Contractor may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.
- 21.6 The Customer agrees that the Contractor may amend their general terms and conditions for subsequent future Contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Contractor to provide Services to the Customer.
- 21.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments, including but not limited to, any Government imposed border lockdowns, etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to the Contractor, once the parties agree that the Force Majeure event has ceased.
- 21.8 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 21.9 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.
- 21.10 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.