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## YDL Australia Pty Ltd T/A YDL Stone – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 "YDL" means YDL Australia Pty Ltd T/A YDL Stone, its successors and assigns or any person acting on behalf of and with the authority of YDL Australia Pty Ltd T/A YDL Stone.
- 1.2 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting YDL 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 a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Goods" means all Goods or Services supplied by YDL 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).
- 1.4 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "**Personal Information**" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.5 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the 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 ordering Goods via the website.**
- 1.6 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between YDL and the Client in accordance with clause 5 below.
- 1.7 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

### 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is 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 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with YDL and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, YDL reserves the right to refuse Delivery.
- 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 (Victoria) Act 2000 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 YDL 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 YDL 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 YDL in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of YDL; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

### 4. Change in Control

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

### 5. Price and Payment

- 5.1 At YDL's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by YDL to the Client; or
  - (b) YDL's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 YDL reserves the right to change the Price in the event of a variation to YDL's quotation. Any variation from the specifications of the Goods (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or ocean and air freight costs and/or inaccurate measurements provided by the Client) will be charged for on the basis of YDL's quotation and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by YDL within ten (10) working days. Failure to do so will entitle YDL 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.
- 5.3 At YDL's sole discretion a non-refundable deposit may be required.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by YDL, which may be:
- (a) on delivery of the Goods;
  - (b) before delivery of the Goods;
  - (c) thirty (30) days following the date of the invoice;

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## YDL Australia Pty Ltd T/A YDL Stone – Terms & Conditions of Trade

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- (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 YDL.
- 5.5 Payment may be made by cash, 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 YDL.
- 5.6 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 YDL nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to YDL an amount equal to any GST YDL must pay for any supply by YDL 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.

### 6. Delivery of Goods

- 6.1 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 YDL’s address; or
  - (b) YDL (or YDL’s nominated carrier) delivers the Goods to the Client’s nominated address even if the Client is not present at the address.
- 6.2 The cost of delivery is in addition to the Price.
- 6.3 Any time specified by YDL for delivery of the Goods is an estimate only. The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. YDL will not be liable for any loss or damage incurred by the Client as a result of delivery being late. In the event that the Client is unable to take delivery of the Goods as arranged then YDL shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 The Client shall ensure that YDL has clear and free access to the work site at all times to enable them to deliver the Goods. YDL shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of YDL.
- 6.5 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks. The Client agrees to indemnify YDL against all costs incurred by YDL in recovering such vehicles in the event they become bogged or otherwise immovable.

### 7. Risk

- 7.1 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.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, YDL is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by YDL is sufficient evidence of YDL’s rights to receive the insurance proceeds without the need for any person dealing with YDL to make further enquiries.
- 7.3 Stone is a natural colour and shade tone, markings, and veining may vary from colour samples provided. YDL will make every effort to match colour samples to the Goods supplied but will not be liable in any way whatsoever for colour samples differing from the Goods supplied.
- 7.4 The Client acknowledges that Goods supplied may
  - (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and
  - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
  - (c) mark or stain if exposed to certain substances; and
  - (d) be damaged or disfigured by impact or scratching.
- 7.5 The Client acknowledges that it is the Client’s responsibility to check quantities, with an on-site measurement before commencing fixing. Measurements taken off plans or the Client’s figures by YDL are approximate only and no responsibility is taken for their accuracy.
- 7.6 If the Client orders an insufficient amount of product, then YDL will take no responsibility for any variation of colour in further batches supplied to the Client or the inability to supply Goods at all.

### 8. Title

- 8.1 YDL and the Client agree that ownership of the Goods shall not pass until:
  - (a) the Client has paid YDL all amounts owing to YDL; and
  - (b) the Client has met all of its other obligations to YDL.
- 8.2 Receipt by YDL 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.
- 8.3 It is further agreed that:
  - (a) until ownership of the Goods passes to the Client in accordance with clause 8.1 that the Client is only a bailee of the Goods and must return the Goods to YDL on request.
  - (b) the Client holds the benefit of the Client’s insurance of the Goods on trust for YDL and must pay to YDL 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 YDL and must pay or deliver the proceeds to YDL 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 YDL and must sell, dispose of or return the resulting product to YDL as it so directs.
  - (e) the Client irrevocably authorises YDL to enter any premises where YDL believes the Goods are kept and recover possession of the Goods.
  - (f) YDL 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 YDL.

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## YDL Australia Pty Ltd T/A YDL Stone – Terms & Conditions of Trade

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(h) YDL may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 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 YDL to the Client.
- 9.3 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 YDL 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 9.3(a)(i) or 9.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, YDL 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 YDL;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of YDL;
  - (e) immediately advise YDL of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 9.4 YDL 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.
- 9.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by YDL, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Client must unconditionally ratify any actions taken by YDL under clauses 9.3 to 9.5.
- 9.9 Subject to any express provisions to the contrary (including those contained in this clause 9) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 10. Security and Charge

- 10.1 In consideration of YDL agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Client indemnifies YDL from and against all YDL’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising YDL’s rights under this clause.
- 10.3 The Client irrevocably appoints YDL and each director of YDL as the Client’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client’s behalf.

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

- 11.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify YDL 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 YDL to inspect the Goods.
- 11.2 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**).
- 11.3 YDL acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, YDL makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. YDL’s liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Client is a consumer within the meaning of the CCA, YDL’s liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If YDL is required to replace the Goods under this clause or the CCA, but is unable to do so, YDL may refund any money the Client has paid for the Goods.
- 11.7 If the Client is not a consumer within the meaning of the CCA, YDL’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 YDL at YDL’s sole discretion;
  - (b) limited to any warranty to which YDL is entitled, if YDL did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 11.8 Subject to this clause 11, returns will only be accepted provided that:
  - (a) the Client has complied with the provisions of clause 11.1; and
  - (b) YDL 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.
- 11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, YDL shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

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## YDL Australia Pty Ltd T/A YDL Stone – Terms & Conditions of Trade

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- (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 YDL;
  - (e) fair wear and tear, any accident, or act of God.
- 11.10 YDL may in its absolute discretion accept non-defective Goods for return in which case YDL may require the Client to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.
- 11.11 Notwithstanding anything contained in this clause if YDL is required by a law to accept a return then YDL will only accept a return on the conditions imposed by that law.

### 12. Default and Consequences of Default

- 12.1 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 YDL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 If the Client owes YDL any money the Client shall indemnify YDL from and against all costs and disbursements incurred by YDL in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, YDL's contract default fee, and bank dishonour fees).
- 12.3 Further to any other rights or remedies YDL may have under this contract, if a Client has made payment to YDL, 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 YDL under this clause 12 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.
- 12.4 Without prejudice to YDL's other remedies at law YDL shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to YDL shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to YDL becomes overdue, or in YDL'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 YDL;
  - (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.

### 13. Cancellation

- 13.1 Without prejudice to any other remedies YDL may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions YDL may suspend or terminate the supply of Goods to the Client. YDL will not be liable to the Client for any loss or damage the Client suffers because YDL has exercised its rights under this clause.
- 13.2 YDL may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice YDL shall repay to the Client any money paid by the Client for the Goods. YDL shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by YDL as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 13.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 14. Privacy Policy

- 14.1 All emails, documents, images or other recorded information held or used by YDL is Personal Information, as defined and referred to in clause 14.3, and therefore considered Confidential Information. YDL 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"). YDL acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by YDL that may result in serious harm to the Client, YDL 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.
- 14.2 Notwithstanding clause 14.1, privacy limitations will extend to YDL in respect of Cookies where transactions for purchases/orders transpire directly from YDL's website. YDL 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 YDL when YDL sends an email to the Client, so YDL may collect and review that information ("collectively Personal Information")

In order to enable / disable the collection of Personal Information by way of Cookies, 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 proceeding with a purchase/order via YDL's website.

- 14.3 The Client agrees for YDL 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 Client in relation to credit provided by YDL.

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## YDL Australia Pty Ltd T/A YDL Stone – Terms & Conditions of Trade

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- 14.4 The Client agrees that YDL may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (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.
- 14.5 The Client consents to YDL being given a consumer credit report to collect overdue payment on commercial credit.
- 14.6 The Client agrees that personal credit information provided may be used and retained by YDL 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.
- 14.7 YDL 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.
- 14.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 14.3 above;
  - (b) name of the credit provider and that YDL 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, 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 YDL has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of YDL, 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).
- 14.9 The Client shall have the right to request (by e-mail) from YDL:
- (a) a copy of the Personal Information about the Client retained by YDL and the right to request that YDL correct any incorrect Personal Information; and
  - (b) that YDL does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 14.10 YDL will destroy Personal Information upon the Client'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.
- 14.11 The Client can make a privacy complaint by contacting YDL via e-mail. YDL 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 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).

### 15. Service of Notices

- 15.1 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.
- 15.2 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.

### 16. Trusts

- 16.1 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 ("Trust") then whether or not YDL may have notice of the Trust, the Client covenants with YDL as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or 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 without consent in writing of YDL (YDL 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 property.

**17. Dispute Resolution**

- 17.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference, each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
  - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

**18. General**

- 18.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Victoria in which YDL has its principal place of business, and are subject to the jurisdiction of the Melbourne Courts in that state.
- 18.3 Subject to clause 11 YDL shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by YDL of these terms and conditions (alternatively YDL's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 18.4 YDL may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 18.5 The Client cannot licence or assign without the written approval of YDL.
- 18.6 YDL 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 YDL's sub-contractors without the authority of YDL.
- 18.7 The Client agrees that YDL 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 YDL to provide Goods to the Client.
- 18.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 18.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.