

## **1. Definitions**

- 1.1 "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.
- 1.2 "Ceil Power Systems" means Power On Systems T/A Ceil Power Systems, its successors and assigns or any person acting on behalf of and with the authority of Power On Systems T/A Ceil Power Systems.
- 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Ceil Power Systems 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.
- 1.4 "Goods" means all Goods or Services supplied by Ceil Power Systems 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).
- 1.5 "Equipment" means all Equipment including any accessories supplied by Ceil Power Systems to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, or any other work authorisation form provided by Ceil Power Systems to the Client.
- 1.6 "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.
- 1.7 "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.**
- 1.8 "Price" means the Price payable (plus any GST where applicable) for the Goods/Equipment as agreed between Ceil Power Systems and the Client in accordance with clause 5 below.
- 1.9 "GST" means Goods and Services Tax 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/Equipment.
- 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 and agrees that:
- (a) the supply of Goods/Equipment on credit shall not take effect until the Client has completed a credit application with Ceil Power Systems and it has been approved with a credit limit established for the account. In the event that the supply of Goods/Equipment request exceeds the Client's credit limit and/or the account exceeds the payment terms, Ceil Power Systems reserves the right to refuse Delivery.
  - (b) where the Client does not elect to control their purchases by a Purchase Order and/or a Letter of Authority, then all purchases made by Client and/or any other third party acting on behalf of the Client to which the Goods are charged to the Client's credit account, shall remain at all times payable by the Client. All said notices of restrictions pertaining to purchases must be in writing and will remain in place until such time as the Client revokes.
- 2.5 The Client agrees to notify Ceil Power Systems in writing immediately upon the departure of the Client employee if an authorised account user. Failure to advise Ceil Power Systems of such departures, then the Client acknowledges they will be bound by all purchase orders made by that account user.
- 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. Errors and Omissions**

- 3.1 The Client acknowledges and accepts that Ceil Power systems 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 Ceil Power Systems 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 Ceil Power Systems 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 Ceil Power Systems; 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 Ceil Power Systems 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 of trustees, or business practice). The Client shall be liable for any loss incurred by Ceil Power Systems as a result of the Client's failure to comply with this clause.

### **5. Price and Payment**

- 5.1 At Ceil Power Systems's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Ceil power Systems to the Client; or
  - (b) Ceil Power Systems's estimated Price (subject to clause 7) which shall not be deemed binding upon Ceil Power Systems as the actual Price can only be determined upon completion of the Services. Ceil Power Systems undertakes to keep the Client informed should the actual Price look likely to exceed the original estimate; or
  - (c) Ceil Power Systems's quoted price (subject to clause 7) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 At Ceil Power Systems's sole discretion a deposit may be required.
- 5.3 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by Ceil Power Systems, which may be:
- (a) on or before Delivery of the Goods/Equipment;
  - (b) thirty (30) days following the date of any invoice given to the Client by Ceil Power Systems; or
  - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Ceil Power Systems.
- 5.4 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 Ceil Power Systems.
- 5.5 Ceil Power Systems may in its discretion allocate any payment received from the Client towards any invoice that Ceil Power Systems determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Ceil Power Systems may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Ceil Power Systems payment will be deemed to be allocated in such manner as preserves the maximum value of Ceil Power Systems's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.
- 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 Ceil Power Systems 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 Ceil Power Systems an amount equal to any GST Ceil Power Systems must pay for any supply by Ceil Power Systems under this or any other agreement for the sale of the Goods of the Equipment. 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/Equipment**

- 6.1 Delivery ("**Delivery**") of the Goods/Equipment is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at Ceil Power Systems's address; or

(b) Ceil Power Systems (or Ceil Power Systems's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.

6.2 At Ceil Power Systems's sole discretion the cost of Delivery is either included in the Price or is in addition to the Price.

6.3 Where Ceil Power Systems is:

(a) to provide any Services at the Client's nominated address, then the Client shall be liable for all costs incurred by Ceil Power Systems from the time they depart from, and until they return to, their normal place of work (including, but not limited to, mileage and time calculated at Ceil Power Systems's standard rates and any parts purchased for the Services); or

(b) requested to store the Client's parts or forklift, or where parts or forklift are not collected within twenty-four hours of advice to the Client that they are ready for collection, then Ceil Power Systems (at its sole discretion) may charge a reasonable fee for storage.

6.4 Any time specified by Ceil Power Systems for Delivery of the Goods/Equipment is an estimate only and Ceil Power Systems will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods/Equipment to be delivered at the time and place as was arranged between both parties. In the event that Ceil Power Systems is unable to supply the Goods/Equipment as agreed solely due to any action or inaction of the Client, then Ceil Power Systems shall be entitled to charge a reasonable fee for redelivery and/or storage.

## **7. Additional Charges**

7.1 Ceil Power Systems reserves the right to change the Price:

(a) if a variation to the Services which are to be provided is requested (including any applicable plans, specifications or job requirements); or

(b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, further faults which are found upon disassembly and/or further inspection) which are only discovered upon commencement of the Services; or (c) in the event of increases to Ceil Power Systems in the cost of labour or parts which are beyond Ceil Power Systems's control.

7.2 All tow and/or salvage fees will be charged to the Client, and will be added to the Price.

7.3 If Ceil Power Systems has been requested by the Client to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.

7.4 If a battery or a charger component is submitted for repair under a warranty or insurance claim, and the claim is declined or payment delayed, the Client is liable for payment and agrees to pay for any such repair.

7.5 The Client acknowledges and agrees that Ceil Power Systems shall be entitled to:

(a) retain any components replaced during the provision of the Services; and

(b) the right to retain all proceeds obtained from the sale of such components to any auto recycler or salvage yard.

## **8. Risk to Goods**

8.1 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.

8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, Ceil Power Systems is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Ceil Power Systems is sufficient evidence of Ceil Power Systems's rights to receive the insurance proceeds without the need for any person dealing with Ceil Power Systems to make further enquiries.

8.3 If the Client requests Ceil Power Systems to leave Goods outside Ceil Power Systems'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.

8.4 The Client acknowledges that Ceil Power Systems is only responsible for the parts that are replaced by Ceil Power Systems and that in the event that other components subsequently fail, the Client agrees to indemnify Ceil Power Systems against any loss or damage to the forklift, the parts, or caused by the components, or any part thereof howsoever arising.

8.5 Ceil Power Systems shall not be liable for the loss of or damage to the battery/charger, its accessories or contents while being serviced or being driven in connection with the authorised Services (including in the event of a call-out: it shall be the Client's responsibility to remain with the battery and a charger to ensure security of the same), unless caused by the negligence of Ceil Power Systems or Ceil Power Systems's employees.

- 8.6 It is the Client's responsibility to ensure that the battery and charger is insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored at Ceil Power Systems's premises. The battery or charger is at all times stored and repaired at the Client's sole risk.
- 8.7 Ceil Power Systems shall accept no responsibility for Services undertaken by any third-party contractor employed by Ceil Power Systems. If the Client believes that they have any claim in relation to Services undertaken by that third party, then said claim must be made against the third-party contractor in the first instance.
- 8.8 Furthermore, in the event that mobile repairs are required, the Client must remain with the battery and charger at all times. Ceil Power Systems shall accept no responsibility for the security of any carried parts or stock.
- 8.9 If Ceil Power Systems is requested to organise other supplies or Services on behalf of the Client, the Client agrees to pay the third-party supplier on invoice by the due date.

## **9. Title to Goods**

- 9.1 Ceil Power Systems and the Client agree that ownership of the Goods shall not pass until: (a) the Client has paid Ceil Power Systems all amounts owing to Ceil Power Systems; and (b) the Client has met all of its other obligations to Ceil Power Systems.
- 9.2 Receipt by Ceil Power Systems 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.
- 9.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 9.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to Ceil Power Systems on request;
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Ceil Power Systems and must pay to Ceil Power Systems 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 Ceil Power Systems and must pay or deliver the proceeds to Ceil Power Systems 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 Ceil Power Systems and must sell, dispose of or return the resulting product to Ceil Power Systems as it so directs;
  - (e) the Client irrevocably authorises Ceil Power Systems to enter any premises where Ceil Power Systems believes the Goods are kept and recover possession of the Goods;
  - (f) Ceil Power Systems 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 Ceil Power Systems;
  - (h) Ceil Power Systems may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

## **10. Personal Property Securities Act 2009 ("PPSA")**

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 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/Equipment and/or collateral (account) – being a monetary obligation of the Client to Ceil Power Systems for Services – that have previously been supplied and that will be supplied in the future by Ceil Power Systems to the Client.
- 10.3 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 Ceil Power Systems 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 10.3(a)(i) or 10.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, Ceil Power Systems 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/Equipment charged thereby;

- (c) not register a financing change statement in respect of a security interest without the prior written consent of Ceil Power Systems;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment and/or collateral (account) in favour of a third party without the prior written consent of Ceil Power Systems;
  - (e) immediately advise Ceil Power Systems of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4 Ceil Power Systems 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.
  - 10.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
  - 10.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
  - 10.7 Unless otherwise agreed to in writing by Ceil Power Systems, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
  - 10.8 The Client must unconditionally ratify any actions taken by Ceil Power Systems under clauses 10.3 to 10.5.
  - 10.9 Subject to any express provisions to the contrary (including those contained in this clause 10), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
  - 10.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 10 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 10 will apply generally for the purposes of the PPSA.

## **11. Security and Charge**

- 11.1 In consideration of Ceil Power Systems agreeing to supply the Goods/Equipment, 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).
- 11.2 The Client indemnifies Ceil Power Systems from and against all Ceil Power Systems's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Ceil Power Systems's rights under this clause.
- 11.3 The Client irrevocably appoints Ceil Power Systems and each director of Ceil Power Systems as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

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

- 12.1 The Client must inspect the Goods/Equipment on Delivery and must within twenty four (24) hours of Delivery notify Ceil Power Systems 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/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Ceil Power Systems to inspect the Goods/Equipment.
- 12.2 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** ).
- 12.3 Ceil Power Systems acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Ceil Power Systems makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. Ceil Power Systems's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Client is a consumer within the meaning of the CCA, Ceil Power Systems's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If Ceil Power Systems is required to replace the Goods under this clause or the CCA, but is unable to do so, Ceil Power Systems may refund any money the Client has paid for the Goods.
- 12.7 If the Client is not a consumer within the meaning of the CCA, Ceil Power Systems'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 Ceil Power Systems at Ceil Power Systems's sole discretion;
  - (b) limited to any warranty to which Ceil Power Systems is entitled, if Ceil Power Systems did not manufacture the Goods; (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that: (a) the Client has complied with the provisions of clause 12.1; and
- (b) Ceil Power Systems 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.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, Ceil Power Systems 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/Equipment;
  - (b) the Client using the Goods/Equipment for any purpose other than that for which they were designed;
  - (c) the Client continuing the use of the Goods/Equipment 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 Ceil Power Systems; (e) fair wear and tear, any accident, or act of God.
- 12.10 In the case of second-hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second-hand Goods prior to Delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Ceil Power Systems as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that Ceil Power Systems has agreed to provide the Client with the second-hand Goods and calculated the Price of the second-hand Goods in reliance of this clause 12.10.
- 12.11 Ceil Power Systems may in its absolute discretion accept non-defective Goods for return in which case Ceil Power Systems may require the Client to pay handling fees of up to thirty percent (30%) of the value of the returned Goods plus any freight costs.
- 12.12 Notwithstanding anything contained in this clause if Ceil Power Systems is required by a law to accept a return then Ceil Power Systems will only accept a return on the conditions imposed by that law.
- 12.13 Subject to clause 12.1, customised, or non-stocklist items or Goods made or ordered to the Client's specifications are not acceptable for credit or return.

### **13. Intellectual Property**

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

### **14. Default and Consequences of Default**

- 14.1 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 Ceil Power Systems's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Client owes Ceil Power Systems any money the Client shall indemnify Ceil Power Systems from and against all costs and disbursements incurred by Ceil Power Systems in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Ceil Power Systems's contract default fee, and bank dishonour fees).
- 14.3 Further to any other rights or remedies Ceil Power Systems may have under this Contract, if a Client has made payment to Ceil Power Systems, 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 Ceil Power Systems under this clause 14 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.

14.4 Without prejudice to Ceil Power Systems's other remedies at law Ceil Power Systems shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Ceil Power Systems shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to Ceil Power Systems becomes overdue, or in Ceil Power Systems'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 Ceil Power Systems;
- (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.

## **15. Cancellation**

15.1 Without prejudice to any other remedies Ceil Power Systems may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Ceil Power Systems may suspend or terminate the supply of Goods/Equipment to the Client. Ceil Power Systems will not be liable to the Client for any loss or damage the Client suffers because Ceil Power Systems has exercised its rights under this clause.

15.2 Ceil Power Systems may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods/Equipment at any time before the Goods/Equipment are delivered by giving written notice to the Client. On giving such notice Ceil Power Systems shall repay to the Client any money paid by the Client for the Goods/Equipment. Ceil Power Systems shall not be liable for any loss or damage whatsoever arising from such cancellation.

15.3 In the event that the Client cancels Delivery of Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by Ceil Power Systems as a direct result of the cancellation (including, but not limited to, any loss of profits).

15.4 Cancellation of orders for Goods/Equipment 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.

## **16. Privacy Policy**

16.1 All emails, documents, images or other recorded information held or used by Ceil Power Systems is Personal Information, as defined and referred to in clause 16.3, and therefore considered Confidential Information. Ceil Power Systems 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"). Ceil Power Systems acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by Ceil Power Systems that may result in serious harm to the Client, Ceil Power Systems 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.

16.2 Notwithstanding clause 16.1, privacy limitations will extend to Ceil Power Systems in respect of Cookies where transactions for purchases/orders transpire directly from Ceil Power Systems's website. Ceil Power Systems 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 Ceil Power Systems when Ceil Power Systems sends an email to the Client, so Ceil Power Systems 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 Ceil Power Systems's website.

- 16.3 The Client agrees for Ceil Power Systems 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 Ceil Power Systems.
- 16.4 The Client agrees that Ceil Power Systems 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.
- 16.5 The Client consents to Ceil Power Systems being given a consumer credit report to collect overdue payment on commercial credit.
- 16.6 The Client agrees that personal credit information provided may be used and retained by Ceil Power Systems for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods/Equipment; and/or
  - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/Equipment; 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/Equipment.
- 16.7 Ceil Power Systems 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.
- 16.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 16.3 above;
  - (b) name of the credit provider and that Ceil Power Systems 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 Ceil Power Systems has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of Ceil Power Systems, 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).
- 16.9 The Client shall have the right to request (by e-mail) from Ceil Power Systems:
- (a) a copy of the Personal Information about the Client retained by Ceil Power Systems and the right to request that Ceil Power Systems correct any incorrect Personal Information; and
  - (b) that Ceil Power Systems does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 16.10 Ceil Power Systems 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.
- 16.11 The Client can make a privacy complaint by contacting Ceil Power Systems via e-mail. Ceil Power Systems 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).

## **17. Unpaid Seller's Rights**

- 17.1 Where the Client has left any item with Ceil Power Systems for repair, modification, exchange or for Ceil Power Systems to perform any other service in relation to the item and Ceil Power Systems has not received or been tendered the whole of any monies owing to it by the Client, Ceil Power Systems shall have, until all monies owing to Ceil Power Systems are paid:



- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

17.2 The lien of Ceil Power Systems shall continue despite the commencement of proceedings, or judgment for any monies owing to Ceil Power Systems having been obtained against the Client.

## **18. Service of Notices**

18.1 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.

18.2 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.

## **19. Trusts**

19.1 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 Ceil Power Systems may have notice of the Trust, the Client covenants with Ceil Power Systems 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 Ceil Power Systems (Ceil Power Systems 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.

## **20. Dispute Resolution**

20.1 If a dispute arises between the parties to this Contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

## **21. 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 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, the state in which Ceil Power Systems has its principal place of business, and are subject to the jurisdiction of the Blacktown Local Court in New South Wales.

21.3 Subject to clause 12, Ceil Power Systems 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 Ceil

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## Terms & Conditions of Trade

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Power Systems of these terms and conditions (alternatively Ceil Power Systems liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

21.4 Ceil Power Systems may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.

21.5 The Client cannot licence or assign without the written approval of Ceil Power Systems.

21.6 Ceil Power Systems 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 Ceil Power Systems sub-contractors without the authority of Ceil Power Systems.

21.7 The Client agrees that Ceil Power Systems 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 Ceil Power Systems to provide Goods/Equipment to the Client.

21.8 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.

21.9 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.