

1. Definitions

- 1.1 “Design Bug” shall mean A & J Russell Investments Pty Ltd T/A Design Bug, its successors and assigns or any person acting on behalf of and with the authority of A & J Russell Investments Pty Ltd T/A Design Bug.
- 1.2 “Client” shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by Design Bug to the Client.
- 1.3 “Guarantor” means that person (or persons) who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 “Goods” shall mean all Goods supplied by Design Bug to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Design Bug to the Client.
- 1.5 “Services” shall mean all Services supplied by Design Bug to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 “Price” shall mean the Price payable for the Goods as agreed between Design Bug and the Client in accordance with clause 4 of this contract.

2. The Competition and Consumer Act 2010 (“CCA”) and Fair Trading Acts (“FTA”)

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Where the Client buys Goods as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer’s statutory rights.

3. Acceptance

- 3.1 Any instructions received by Design Bug from the Client for the supply of Goods and/or the Client’s acceptance of Goods supplied by Design Bug shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of Design Bug.
- 3.4 The Client shall give Design Bug not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client’s name and/or any other change in the Client’s details (including but not limited to, changes in the Client’s address, facsimile number, or business practice). The Client shall be liable for any loss incurred by Design Bug as a result of the Client’s failure to comply with this clause.
- 3.5 Goods are supplied by Design Bug only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. Price and Payment

- 4.1 At Design Bug’s sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by Design Bug to the Client in respect of Goods supplied; or
 - (b) Design Bug’s current price at the date of delivery of the Goods according to Design Bug’s current Price list; or
 - (c) Design Bug’s quoted Price (subject to clause 4.2) which shall be binding upon Design Bug provided that the Client shall accept Design Bug’s quotation in writing within thirty (30) days.
- 4.2 Design Bug reserves the right to change the Price in the event of a variation to Design Bug’s quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to unforeseen circumstances, or due to additional costs charged by offsite printers, or as a result of increases to Design Bug in the cost of materials and labour) will be charged for on the basis of Design Bug’s quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 Design Bug may submit detailed progress payment claims in accordance with Design Bug’s specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any materials delivered to the site but not yet installed.
- 4.4 At Design Bug’s sole discretion a non-refundable deposit may be required.
- 4.5 At Design Bug’s sole discretion payment shall be due on delivery of the Goods.
- 4.6 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
- 4.7 Payment will be made by cash, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and Design Bug.
- 4.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Delivery of Goods

- 5.1 At Design Bug’s sole discretion delivery of the Goods shall take place when:
 - (a) the Client takes possession of the Goods at Design Bug’s address; or
 - (b) the Client takes possession of the Goods at the Client’s nominated address (in the event that the Goods are delivered by Design Bug or Design Bug’s nominated carrier).
- 5.2 At Design Bug’s sole discretion the costs of delivery are:
 - (a) included in the Price; or

- (b) in addition to the Price; or
(c) for the Client's account.
- 5.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Design Bug shall be entitled to charge a reasonable fee for redelivery.
- 5.4 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
(a) such discrepancy in quantity shall not exceed five percent (5%); and
(b) the Price shall be adjusted pro rata to the discrepancy.
- 5.5 The failure of Design Bug to deliver shall not entitle either party to treat this contract as repudiated.
- 5.6 Design Bug shall not be liable for any loss or damage whatsoever due to failure by Design Bug to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Design Bug.

6. Risk

- 6.1 If Design Bug retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Design Bug is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Design Bug is sufficient evidence of Design Bug's rights to receive the insurance proceeds without the need for any person dealing with Design Bug to make further enquiries.

7. Title

- 7.1 Design Bug and the Client agree that ownership of the Goods shall not pass until:
(a) the Client has paid Design Bug all amounts owing for the particular Goods; and
(b) the Client has met all other obligations due by the Client to Design Bug in respect of all contracts between Design Bug and the Client.
- 7.2 Receipt by Design Bug 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 Design Bug's ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
(a) where practicable the Goods shall be kept separate and identifiable until Design Bug shall have received payment and all other obligations of the Client are met; and
(b) until such time as ownership of the Goods shall pass from Design Bug to the Client Design Bug may give notice in writing to the Client to return the Goods or any of them to Design Bug. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
(c) Design Bug shall have the right of stopping the Goods in transit whether or not delivery has been made; and
(d) if the Client fails to return the Goods to Design Bug then Design Bug or Design Bug's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated and take possession of the Goods; and
(e) the Client is only a bailee of the Goods and until such time as Design Bug has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to Design Bug for the Goods, on trust for Design Bug; and
(f) the Client shall not deal with the money of Design Bug in any way which may be adverse to Design Bug; and
(g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Design Bug; and
(h) Design Bug can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
(i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that Design Bug will be the owner of the end products.

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

- 8.1 In this clause:
(a) financing statement has the meaning given to it by the PPSA;
(b) financing change statement has the meaning given to it by the PPSA;
(c) security agreement means the security agreement under the PPSA created between the Client and Design Bug by these terms and conditions; and
(d) security interest has the meaning given to it by the PPSA.
- 8.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions:
(a) constitute a security agreement for the purposes of the PPSA; and
(b) create a security interest in:
(i) all Goods previously supplied by Design Bug to the Client (if any);
(ii) all Goods that will be supplied in the future by Design Bug to the Client.
- 8.3 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 Design Bug 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 8.3(a)(i) or 8.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Design Bug 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 Design Bug;
 - (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 Design Bug; and
 - (e) immediately advise Design Bug 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.
- 8.4 Design Bug 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.
- 8.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.7 Unless otherwise agreed to in writing by Design Bug, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Client shall unconditionally ratify any actions taken by Design Bug under clauses 8.3 to 8.5.

9. Security and Charge

- 9.1 Despite anything to the contrary contained herein or any other rights which Design Bug may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Design Bug or Design Bug's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that Design Bug (or Design Bug's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should Design Bug elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify Design Bug from and against all Design Bug's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Design Bug or Design Bug's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 9.1.

10. Defects

- 10.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Design Bug of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Design Bug an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Design Bug has agreed in writing that the Client is entitled to reject, Design Bug's liability is limited to either (at Design Bug's discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods as a consumer within the meaning of the Competition and Consumer Act 2010 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
- 10.2 Goods will not be accepted for return other than in accordance with 10.1 above.

11. Warranty

- 11.1 To the extent permitted by statute, no warranty is given by Design Bug as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. Design Bug shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

12. Intellectual Property

- 12.1 Where Design Bug has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in Design Bug, and shall only be used by the Client at Design Bug's discretion.
- 12.2 The Client warrants that all designs or instructions to Design Bug will not cause Design Bug to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Design Bug against any action taken by a third party against Design Bug in respect of any such infringement.
- 12.3 The Client agrees that Design Bug may use any documents, designs, drawings or Goods created by Design Bug for the purposes of advertising, marketing, or entry into any competition.

13. Default and Consequences of Default

- 13.1 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 Design Bug's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by Design Bug.
- 13.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify Design Bug from and against all costs and disbursements incurred by Design Bug in pursuing the debt including legal costs on a solicitor and own client basis and Design Bug's collection agency costs.
- 13.4 Without prejudice to any other remedies Design Bug may have, if at any time the Client is in breach of any obligation (including those relating to payment) Design Bug may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. Design Bug will not be liable to the Client for any loss or damage the Client suffers because Design Bug has exercised its rights under this clause.
- 13.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 13.6 Without prejudice to Design Bug's other remedies at law Design Bug shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Design Bug shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Design Bug becomes overdue, or in Design Bug's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

14. Cancellation

- 14.1 Design Bug 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 Design Bug shall repay to the Client any sums paid in respect of the Price. Design Bug shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by Design Bug (including, but not limited to, any loss of profits) up to the time of cancellation.
- 14.3 Cancellation of orders for Goods made to the Client's specifications or non-stocklist items will definitely not be accepted, once production has commenced.

15. Privacy Act 1988

- 15.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for Design Bug to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by Design Bug.
- 15.2 The Client agrees that Design Bug may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency 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.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 15.3 The Client consents to Design Bug being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Client agrees that personal credit information provided may be used and retained by Design Bug for the following purposes (and for other purposes as shall be agreed between the Client and Design Bug or required by law from time to time):
- (a) the provision of Goods; and/or
 - (b) the marketing of Goods by Design Bug, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 15.5 Design Bug may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

- 15.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that Design Bug is a current credit provider to the Client;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of Design Bug, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Client by Design Bug has been paid or otherwise discharged.

16. General

- 16.1 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.
- 16.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
- 16.3 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 of New South Wales.
- 16.4 Design Bug 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 Design Bug of these terms and conditions.
- 16.5 In the event of any breach of this contract by Design Bug the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 16.6 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 Design Bug nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.7 Design Bug may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.8 The Client agrees that Design Bug may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Design Bug notifies the Client of such change. The Client shall be under no obligation to accept such changes except where Design Bug supplies further Goods to the Client and the Client accepts such Goods.
- 16.9 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.
- 16.10 The failure by Design Bug to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Design Bug's right to subsequently enforce that provision.