

Zimmermann Industries Pty Ltd

Terms and Conditions - June 2023

1. Interpretation

1.1 In these Terms and Conditions of Sale (**Terms**):

Additional Charge(s) shall mean those detailed in clause 8.

Business Day means a day that is not a Saturday, Sunday, or public holiday in the state where the Services are principally being carried out and Goods provided, and a reference to a date which does not fall on a Business Day is to be construed as a reference to the next Business Day.

Customer means a person or entity entering into an agreement for the supply of Goods and/or Services by Zimmermann and includes the Customer's agents and permitted assigns.

Goods means any Goods supplied by Zimmermann including those supplied while providing the Services.

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law, including copyright, trademarks, patents, and registered designs.

Loss includes, but is not limited to, costs (including, but not limited to, legal costs), expenses, lost profits, awards of damages, personal injury, death, and property damage.

Order means a Customer's request to purchase Goods and/or Services.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Price means the price payable by the Customer to the Zimmermann for the Goods and/or Services, in Australian dollars and include GST where applicable. Prices may not include delivery and handling charges. Prices are subject to change.

Quote means Zimmermann's written description and price of the Goods and/or Services to be supplied to the Customer.

Services means the services to be provided by the Zimmermann to the Customer in accordance with a Quote, Order, and these Terms.

Third Party means a reference to any agent or contractor of either the Customer or Zimmermann, or of any of their related bodies corporate, and any person engaged by any of them.

Zimmermann means Zimmermann Industries Pty Ltd (ABN: 25 235 418 332) as the supplier of Goods and/or Services and includes Zimmermann's agents and permitted assigns.

1.2 In these Terms, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa.
- (b) a reference to a party includes that party's executors, administrators, successors and permitted assigns.
- (c) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.
- (d) headings are for ease of reference only and do not affect interpretation.
- (e) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter, or thing:
 - (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
 - (ii) in all other cases, must be done on the next Business Day.

1.3 The Customer engages Zimmermann to provide Goods and Services strictly as an independent contractor. Zimmermann is not engaged as an employee, partner, agent, joint venture, or franchisee.

1.4 These Terms apply to all transactions between the Customer and Zimmermann relating to the provision of Goods and/or Services, including all quotations, contracts, and variations.

1.5 These Terms and any Quotes and written variations agreed to in writing by Zimmermann represent the whole agreement between the parties relating to the subject matter of these terms.

1.6 These Terms supersede all oral and written negotiations and communications by and on behalf of either of the parties.

1.7 These Terms take precedence over Terms contained in any document of the Customer or elsewhere.

1.8 The variation or waiver of a provision of this agreement or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.

1.9 These Terms may not be changed or modified in any way except in writing signed by or on behalf of all the parties.

1.10 By placing a Customer Order, the Customer accept these Terms and agree to be bound by them, and an agreement is formed between Zimmermann and the Customer.

1.11 These Terms may be amended at any time without notice to the Customer. The Customer's continued engagement with Zimmermann following such amendment of these Terms will represent an agreement by the Customer to be bound by these Terms as amended. Zimmermann may choose to provide the Customer with notice of amended terms, and the Customer agree to receive notification of the amendments from Zimmermann.

2. Quotes and Orders

2.1 Zimmermann may provide the Customer with a Quote. Any Quote issued by Zimmermann will be valid for acceptance by the Customer for a period of thirty (30) days from the date of issue, unless otherwise stated on the Quote.

2.2 Unless otherwise expressly agreed in writing, a Quote does not include delivery, installation of the Goods, insurance, permits, engineer's computations & statutory requirements.

2.3 Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary material and instructions to Zimmermann. The Price may be different to the Quote if subject to an Additional Charge.

2.4 Zimmermann will not commence work until the Quote has been accepted by the Customer in writing and signed by an authorised representative of the Customer. Zimmermann will recognize this signed Quote as a Customer Order.

2.5 Every Customer Order constitutes acceptance of these Terms (which may be amended from time to time).

2.6 Zimmermann reserves the right to amend any Quote before the Order has been completed to take into account any rise or fall in the cost of completing the Order. Zimmermann will notify the Customer of such amendment as soon as practicable. Upon Zimmermann giving the Customer notification of such amendment, the amended Quote will apply and will supersede any previous Quote given with respect to the Order.

2.7 Zimmermann may in its absolute discretion, accept or reject or cancel an Order made by you for any reason (or no reason), including in circumstances where:

- (a) Goods are unavailable for any reason whatsoever;
- (b) An error in the Quote provided to the Customer, or description of, the Goods and Services;
- (c) An error in the Customer's Order;

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- (d) Credit limits cannot be agreed upon or have been exceeded; or
- (e) Payment for Goods and/or Services previously provided to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of Zimmermann, associated with the Customer, has not been received by Zimmermann.

3. Delivery

- 3.1 Zimmermann will use reasonable endeavours to deliver the Goods within any stated timeframes for dispatch, however Zimmermann does not warrant that these timeframes will always be met, as many factors may affect these timeframes.
- 3.2 If Zimmermann is unable to effect delivery or provision of the Goods to the Customer through circumstances beyond the control of Zimmermann. It may cancel the Order by notice in writing to the Customer and the Customer agrees that Zimmermann will be under no liability to the Customer or any third party for any damages, loss or other liability resulting from such cancellation.
- 3.3 If Zimmermann finds problems at the premises where the Goods are to be delivered or installed which cause additional costs to be incurred by Zimmermann and such problems were not advised by the Customer to Zimmermann before or at the time of quotation, the Customer agrees to be liable to Zimmermann for any costs associated with such problems.
- 3.4 Any costs incurred by Zimmermann in reliance on incorrect or inadequate information provided by the Customer may result in an Additional Charge.
- 3.5 Zimmermann shall use reasonable efforts to deliver and where applicable install the Goods to the Customer's specified location by the agreed date. Delivery times may be greater for regional or remote areas.
- 3.6 Zimmermann cannot and will not accept responsibility for any loss, damage or other liability whatsoever arising either directly or indirectly from a delay in delivery, delivery failures or delay of installation by Zimmermann or its agents.

4. Customer's Obligations

- 4.1 In consideration for the Goods or Services, the Customer agrees to pay Zimmermann the Price, and in accordance with the payment terms as further described at clause 9.
- 4.2 The Customer expressly acknowledges and warrants:
 - (a) to procure, at its own cost, all necessary licences, permits or regulatory approvals (such as council approval) for installation of the Goods.
 - (b) to provide all information, documentation, and instructions that the Zimmermann reasonably requires in order to provide the Goods or Services.
 - (c) to provide a site that is suitable for the provision of the Goods or Services by Zimmermann.
 - (d) that any work site provided will comply with any work health and safety (OHS) laws and any other relevant safety standards, legislation, or regulation.
 - (e) that if, for any reason, the Zimmermann forms the opinion that the Customer's premises is not safe for the Zimmermann to provide the Goods or Services, then Zimmermann may delay until the premises are made safe by the Customer, at the Customer's expense.
 - (f) that the Customer will, at its own cost, supply any utilities (such as water and electricity) as necessary for the provision of the Services by Zimmermann.
 - (g) that the Customer must advise the Zimmermann of the precise location of all services or utilities on any work site and clearly mark the same. These include, but are not limited to water, electrical, gas, oil, sewer, pumping, telecommunications, and any other services that may be on site; and
 - (h) the Customer will use only Zimmermann's parts and labour with respect to the Goods or Services.
- 4.3 Zimmermann shall not be liable for any harm, Loss, damage, claim, injury (including death), cost or delay incurred by the Customer because of the Customer's act or omission in breach of clause 4.
- 4.4 The Customer agrees to indemnify Zimmermann against all harm, Loss, damage, claim, injury (including death), cost or delay suffered by Zimmermann to the extent it was caused by an act or omission of the Customer in breach of clause 4.

5. Production and Process including Artwork & Samples

- 5.1 If specified in the Quote and Order, Zimmermann will provide the Customer artwork drafts for review and approval in writing. Production of the Goods will not proceed until the Customer has provided written approval of the artwork.
- 5.2 If Zimmermann prepares more than two drafts due to changes by the Customer, additional charges may apply.
- 5.3 If required and specified in the Quote and Order, Zimmermann will provide the Customer samples for review and approval. Production of the Goods will not proceed until the Customer has provided written approval of the samples.
- 5.4 Zimmermann is not responsible for production errors where:
 - (a) Artwork proofs are not requested by the Customer (except for straight repeats of previous Orders without alterations).
 - (b) the Customer fails to provide their approval within a reasonable time; or
 - (c) the Customer does not communicate their approval (or otherwise) in writing.
- 5.5 The Customer acknowledges that their delay in approval of artwork and /or samples will delay production.

6. Functionality and Performance

- 6.1 The Customer acknowledges that differences in material, equipment and ink may cause variation in colour and, subject to clause 15, such variation is acceptable within the terms of the Order.
- 6.2 All information, specifications and samples provided by Zimmermann in relation to the Goods and/or Services will be approximations only and, subject to any guarantees under the *Australian Consumer Law*, small deviations or slight variations which do not substantially affect the Customer's use of the Goods and/or Services will not entitle the Customer either to reject the Goods upon delivery, or to make any claim in respect of them.

7. Variations

- 7.1 The Customer may request a variation to its Order. A request for a variation must be in writing and addressed to Zimmermann. A variation is effective only if agreed in writing by Zimmermann.
- 7.2 As a result of a variation Zimmermann reserves the right to:
 - (a) raise an Additional Charge for extra costs incurred.
 - (b) extend the time for the provision of Goods and/or Services.

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8. Additional Charges

8.1 Where Zimmermann incurs additional costs as a result of:

- (a) a variation.
- (b) the costs of transport, delivery, or storage of the Goods (unless included in the Quote).
- (c) the Customer providing inaccurate, incomplete, or inadequate information or material to Zimmermann.
- (d) the Customer's failure to meet its obligations under this agreement, then Zimmermann may require the Customer to pay Additional Charges (in addition to the Price) in respect of those costs incurred.

8.2 Where Goods are made available for collection by the Customer but remain uncollected two weeks (14 days) after the Customer is notified the Goods are ready for collection, the Customer will be liable for all costs of storage of the Goods. The Customer agrees to indemnify the Zimmermann with respect to all such costs.

9. Invoicing and Payment

9.1 Zimmermann may (in its absolute discretion) invoice the Customer in any of the following ways:

- (a) prior to commencing the provision of the Goods and/or Services for all or part of the work.
- (b) progressively in instalments during the work.
- (c) on completion of the work; or
- (d) as otherwise agreed by Zimmermann.

9.2 Payment for invoices described in 9.1 (a) are due in 7 days and the Customer agrees that Zimmermann is under no obligation to commence work on any order until receipt by Zimmermann of the payment of these invoices.

9.3 The Customer must pay Zimmermann within 30 days of the issue date for all invoices described in 9.1(b) and 9.1(c), unless otherwise indicated on Zimmermann's invoice.

9.4 If the Customer does not make payment by the invoice due date, Zimmermann is entitled to do any or all the following, without prejudice to any other rights it may have:

- (a) charge interest on the outstanding amount at a rate determined by Zimmermann, calculated on a daily basis.
- (b) recover from the Customer, as a debt due and payable, all costs and expenses associated with collecting the outstanding amount.
- (c) require the Customer to pay, in advance, for any Goods or Services.
- (d) suspend work and/or Delivery of Goods or Services until overdue amounts are paid in full.
- (e) terminate this Agreement in accordance with clause 14.

9.5 Credit Account

- (a) The Customer may apply for a Credit Account with Zimmermann to purchase Goods and /or Services.
- (b) Zimmermann has no obligation to provide or continue to provide credit facilities.
- (c) The Customer is not entitled to credit facilities until they receive an approved Credit Account with Zimmermann.
- (d) A Credit Account must only be used by the Customer, which means it cannot be assigned, transferred, or made available for use by any other entity or person (including by a subsequent purchaser of the Customer) without Zimmermann's prior written consent.
- (e) Any credit limit placed on the Customer's Credit Account is for Zimmermann's administrative purposes only and does not constitute a term of this or any other contract. If the Customer exceeds the credit limit placed on their Credit Account, Zimmermann may require the Customer to make immediate payment to return their Credit Account to the credit limit before placing any further Orders.
- (f) The Customer also authorises Zimmermann to debit their Credit Account with the price of Goods and Services supplied and all other amounts owed to Zimmermann (including fees and interest payable under the Terms).

9.6 Zimmermann may in its complete discretion apply any payment received from the Customer first to any amount owing by the Customer to Zimmermann.

9.7 The Customer is not entitled to set off or deduct from the invoice amount any sums owed or claimed to be owed by Zimmermann to the Customer

9.8 Unless otherwise stated, quoted amounts do not include GST and therefore Zimmermann may add on GST to the amount payable by the Customer.

10. Acceptance of Goods

If the Customer fails to advise Zimmermann in writing of any fault in Goods or failure of Goods to accord with the Customer's Order within 48 hours of delivery, the Customer is deemed to have accepted the Goods as is. Nothing in this clause affects any applicable rights under the Australian Consumer Law.

11. Risk and Retention of Title

11.1 Title and risk in the Goods, such as loss and damage, passes to the Customer immediately upon delivery or making available for collection by Zimmermann, as the case may be.

11.2 Subject to clause 13, title in Goods supplied to the Customer pursuant to these Terms does not pass to the Customer until all moneys (including moneys owing in respect of other transactions between Zimmermann and the Customer) due and payable to Zimmermann by the Customer have been fully paid.

11.3 Where Goods or Services are supplied by Zimmermann to the Customer without payment in full of all moneys payable in respect of the Goods or Services provided by Zimmermann in respect of those Goods, the Customer:

- (a) is a bailee of the Goods until title in them passes to the Customer.
- (b) acknowledges that Zimmermann may register its interests in the Goods under the *Personal Property Securities Act 2009* (Cth) (**PPSA**).
- (c) must be able upon demand by Zimmermann to separate and identify as belonging to Zimmermann Goods supplied by Zimmermann from other Goods which are held by the Customer.
- (d) must not allow any person to have or acquire any **Security Interest** (as defined in the PPSA) in the Goods.
- (e) must pay to Zimmermann on demand the amount of any Loss suffered or incurred by Zimmermann arising out of or in connection with any Loss or damage to the Goods whilst in the Customer's care, or any copying or replicating of the Goods.
- (f) agrees that Zimmermann may repossess the Goods if payment is not made within 14 days (or such longer time as Zimmermann may, in its complete discretion, approve in writing) of the supply of the Goods; and

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- (g) the Customer grants an irrevocable licence to Zimmermann or its agent to enter the Customer's premises to recover possession of Goods pursuant to this clause. The Customer indemnifies Zimmermann in respect of any damage to property or personal injury which occurs as a result of any negligent or wrongful act by Zimmermann or its agent in entering the Customer's premises or recovering possession of the Goods.
- 11.4 Where Goods are supplied by Zimmermann to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by Zimmermann in respect of those Goods, and the Customer:
- (a) makes a new object from the Goods, whether finished or not; or
 - (b) the Customer mixes the Goods with other Goods.
 - (c) the Goods become part of other Goods, (new Goods), the Customer acknowledges that the ownership of the new Goods immediately passes to Zimmermann.
- 11.5 The Customer will hold the new Goods on trust for Zimmermann until payment of all sums owing to Zimmermann whether under this contract or any other contract with Zimmermann have been made and Zimmermann may require the Customer to store the new Goods in a manner that clearly indicates Zimmermann's ownership.
- 11.6 For the avoidance of doubt, under clause 11.4, the ownership of the new Goods passes to Zimmermann at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other Goods.
- 11.7 Notwithstanding clause 11.3 the Customer may transfer, sell, or dispose of Goods, including new Goods, to a third party in the ordinary course of business provided that:
- (a) where the Customer is paid by a third party in respect of Goods including new Goods, the Customer shall hold the whole of the proceeds of sale less GST on trust for the Zimmermann— in a separate account – until all amounts owned by the Customer to Zimmermann have been paid; or
 - (b) where the Customer is not paid by a third party, the Customer agrees to assign all its rights against such third party to Zimmermann upon Zimmermann giving the Customer notice in writing to that effect and for the purpose of giving effect to such assignment the Customer irrevocably appoints Zimmermann as its attorney.
- 11.8 Where Goods are supplied by Zimmermann to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by Zimmermann in respect of those Goods, the Customer acknowledges that Zimmermann has a right to register and perfect (and where relevant enforce) a personal property security interest under the PPSA.

12. Personal Property Securities Act

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- 12.1 The Customer agrees and acknowledges that the title to Goods supplied on credit is retained by Zimmermann until such time that all debts are duly discharged, and that Zimmermann's title is not displaced by possession of the Goods by the Customer or any third party.
- 12.2 The Customer acknowledges and agrees that these Terms, and any subsequent sales agreements are an accepted and adopted Security Agreement between Zimmermann and the Customer for the purposes of the PPSA, and that a Security Interest exists in all Goods supplied to the Customer (and their proceeds). This Security Agreement between the parties includes any arrangements documented by emails or information or documents exchanged electronically.
- 12.3 In requesting Zimmermann provide Goods or Services, the Customer is deemed to have accepted this Security Agreement and any later amendments that may arise.
- 12.4 The Customer acknowledges, agrees, and grants to Zimmermann, a Security Interest in:
- (a) all Goods and any proceeds previously supplied or that will be supplied in the future by Zimmermann to the Customer; and
 - (b) any proceeds that relate to the Goods purchased on credit by the Customer for the benefit of the Customer.
- 12.5 The above Security Interest secures all moneys owing by the Customer to Zimmermann under these terms or otherwise.
- 12.6 The Customer acknowledges and agrees the Security Interest is a continuing and subsisting interest in the Goods with priority over any registered or unregistered general (or other) Security Interest and any unsecured creditor.
- 12.7 The Customer acknowledges that the Security Interest over Goods or their proceeds arising under these terms as and where applicable will be a Purchase Money Security Interest (**PMSI**).
- 12.8 The Customer will do everything reasonably required of it by Zimmermann to enable Zimmermann to register its Security Interests with the priority it requires and to maintain those registrations, including to correct a defect in a financing statement.
- 12.9 The Security Interests arising under this clause 12 will be perfected by Zimmermann prior to the Customer obtaining possession of the Goods and the parties confirm they have not agreed that any Security Interest arising under this clause attaches at any later time.
- 12.10 Zimmermann does not need to give the Customer any notice under the PPSA (including notice of the financing statement or verification statement) unless required by the PPSA.
- 12.11 Any time the Customer makes a payment to Zimmermann, irrespective of whether the payment is made under or in connection with this Agreement, Zimmermann may apply that payment:
- (a) first to satisfy an obligation that is not secured.
 - (b) second, to satisfy an obligation that is secured, but not by a PMSI.
 - (c) third, to satisfy an obligation that is secured by a PMSI for that obligation and using proceeds from the sale of the collateral subject to that PMSI; and
 - (d) fourth, to satisfy an obligation that is secured by a PMSI using funds or proceeds from any source.
- 12.12 For the avoidance of doubt and without prejudice to Zimmermann's rights under the PPSA, the Customer:
- (a) may sell the Goods to its customers and if it does so, then Zimmermann will have a Security Interest in the proceeds of sale; and
 - (b) will, where and when applicable and instructed by Zimmermann, implement, maintain, and comply in all material respects with, procedures for the perfection of Security Interests, including taking all steps under the PPSA to perfect continuously any such Security Interest.
- 12.13 The Customer agrees that sections 95, 120, 121(4), 125, 128, 129, 130, 132, 134, 135, 142, 143 and 157 of the PPSA will not apply to the enforcement of those Security Interests.
- 12.14 The Customer agrees not to disclose to an 'Interested person' (as defined in section 275(9) of the PPSA) or any other person, any Information of the kind described in section 275(1) of the PPSA including these terms as the Security Agreement between the Customer and Zimmermann.

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- 12.15 The Customer will notify Zimmermann immediately in writing if the Customer changes its name or address for service, contact details or if there are any changes required under the PPSA in respect of these terms.
- 12.16 The Customer's right to possession of Goods still owned by Zimmermann under these terms will cease if:
- (a) the Customer being an individual, commits an act of bankruptcy; or,
 - (b) the Customer being a corporation, circumstances arise where a receiver, manager, administrator, or controller becomes entitled to take possession of any of the Customer's assets, any proceedings are instituted for winding up, or the Customer enters into a deed or scheme of arrangement; or
 - (c) the Customer ceases or threatens to cease conducting business in the normal manner or apply for deregistration or receive a deregistration notice; or
 - (d) the Customer fails to comply with any demand for payment issued by Zimmermann; or
 - (e) the Customer is in breach any of these Terms or is in default of any other agreement with Zimmermann.
- 12.17 The Customer agrees that Zimmermann is entitled to exercise the rights contained in section 123 of the PPSA and enter any premises where the Goods supplied by Zimmermann are still unpaid for, repossess such Goods. The Customer agrees to indemnify and keep Zimmermann indemnified in respect of any claims, actions and costs that may arise against Zimmermann in relation to the removal, repossession, and sale of the Goods pursuant to these Terms including any claims brought by third parties.
- 12.18 The Customer agrees that repossession and retention of the Goods pursuant to the PPSA will only satisfy so much of the monies which may become payable to Zimmermann by the Customer, as is equivalent to Zimmermann's estimation of the market value of the Goods as it is at the date of repossession and the repossession and retention will immediately extinguish any rights for interest the Customer has in relation to the Goods.
- 12.19 Until any obligations owed to Zimmermann by the Customer are discharged in full, the Customer must not give Zimmermann a written demand or allow any other person to give Zimmermann a written demand requiring Zimmermann to register a financing change statement under the PPSA or enter into or allow any other person to enter into the PPSR, a financing change statement.
- 12.20 The rights and obligations of Zimmermann and the Customer under the Terms will be binding on, and will be of benefit to, each of the party's successors, permitted assigns, heirs, executors and administrators.

13. Intellectual Property

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- 13.1 The Parties agree that, unless otherwise expressly agreed in writing, all Intellectual Property Rights in any works created by Zimmermann in connection with the Goods or Services remain the property of Zimmermann.
- 13.2 The Customer warrants that all designs, specifications, or instructions given to Zimmermann to fulfil the Customer's Order will not cause Zimmermann to infringe any third-party Intellectual Property Rights. The Customer agrees to indemnify Zimmermann against any action, claim, Loss, harm, or damage in respect of any such infringement.
- 13.3 Subject to clause 13.2 and payment of all invoices due in respect of the Goods and/or Services, Zimmermann grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by Zimmermann in connection with the provision of Goods and/or Services under these Terms.
- 13.4 The Customer acknowledge that any Intellectual Property Rights, including graphics, logos, trademarks, distinctive brand features, design, text, icons, relating to any works created by Zimmermann in connection with the Goods or Services remain in the ownership of Zimmermann and must not be used in any manner without the prior written consent of Zimmermann.
- 13.5 The Customer acknowledges that the Intellectual Property Rights in any works created by Zimmermann are protected by Australian and international law.
- 13.6 If the Customer correspond or otherwise communicate with Zimmermann, the Customer automatically grant to Zimmermann an irrevocable, perpetual, non-exclusive, royalty-free, world-wide license to use, copy, display and distribute the content of the Customer's communication and to prepare derivative works of the content or incorporate the content into other works in order to publish and promote such content. This may include, but is not limited to, publishing testimonials on Zimmermann's advertising, marketing and/or promotional material and developing the Customer's ideas and suggestions for improved products.

14. Default and Cancellation

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- 14.1 Each of the following occurrences constitutes an event of default:
- (a) the Customer breaches or is alleged to have breached these Terms for any reason (including, but not limited to, defaulting on any payment due under these Terms).
 - (b) the Customer, being a natural person, commits an act of bankruptcy.
 - (c) the Customer, being a corporation, is subject to:
 - (i) a petition being presented, an order being made, or a meeting being called to consider a resolution for the Customer to be wound up, deregistered, or dissolved.
 - (ii) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Customer's property and undertaking.
 - (iii) the entering of a scheme of arrangement (other than for the purpose of restructuring); or
 - (iv) the Customer purports to assign its rights under these Terms without Zimmermann's written consent.
 - (d) any assignment for the benefit of creditors; or
 - (e) the Customer ceases or threatens to cease conduct of its business in the normal manner.
- 14.2 Where an event of default occurs, except where payment in full has been received by Zimmermann, Zimmermann may:
- (a) refuse to deliver Goods or provide further Services.
 - (b) pursuant to clause 11, repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or
 - (c) retain (where applicable) all moneys paid an account of Goods and/or Services or otherwise.
- 14.3 In addition to any action permitted under clause 14.2, upon the occurrence of an event of default:
- (a) all invoices payable by the Customer will become immediately due and payable; and
 - (b) Zimmermann may terminate all contracts and credit arrangements (if any) with the Customer.
- 14.4 In addition to the express rights of termination provided in these Terms, Zimmermann may immediately terminate the agreement between the parties upon the occurrence of any of the following:
- (a) an event of default pursuant to clause 14.1;

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- (b) the customer breaches any of its obligations at clause 4;
 - (c) the customer fails to make a required payment by the due date; or
 - (d) in any other circumstances, upon Zimmermann giving 30 days written notice to the Customer.
- 14.5 Should the Customer cancel its Order once it has been placed, or Zimmermann has otherwise commenced works for the Customer:
- (a) the Customer indemnifies Zimmermann against any and all Losses (including loss of profit, loss of opportunity and third-party costs) incurred by Zimmermann;
 - (b) Upon receipt of cancellation, an invoice will be issued accordingly for Goods and/or Services rendered to that point.
 - (c) the Customer will not be entitled to any refund of monies paid.

15. Liability and Indemnity

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- 15.1 The Customer expressly agrees that use of the Goods and Services is at the Customer's risk. To the full extent allowed by law, Zimmermann's liability for breach of any term implied into these Terms by any law is excluded.
- 15.2 Zimmermann will provide a warranty on defects in the Goods and/ or Services supplied for a period of 12 months from the date of invoice. Liability is limited at Zimmermann's discretion to.
- (a) The replacement of the goods or the resupply of equivalent Goods.
 - (b) The repair of the Goods; or
 - (c) The refund of the price paid for the Goods.
- 15.3 To the fullest extent permissible at law, Zimmermann is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods or Services, or otherwise arising out of the provision of Goods or the Services, whether based on Terms, negligence, strict liability or otherwise, even if Zimmermann has been advised of the possibility of damages.
- 15.4 The *Australian Consumer Law* may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, Zimmermann's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to Services to the supply of Services again or cost of re-supplying the Services again.
- 15.5 The Customer acknowledges that the Goods and/or Services are not for personal, domestic, or household purposes.
- 15.6 Any advice, recommendation, information, assistance, or service given by Zimmermann in relation to Goods and/or Services is given in good faith, but is provided without any warranty or accuracy, appropriateness, or reliability. Zimmermann does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance, or service.
- 15.7 The Customer agrees to indemnify and keep indemnified Zimmermann, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against Zimmermann or, for which Zimmermann is liable, in connection with any Loss arising from or incidental to the provision of Goods and/or Services or the subject matter of this agreement including, but not limited to any legal costs incurred by Zimmermann in relation to meeting any claim or demand or any legal costs for which Zimmermann is liable in connection with any such claim or demand.
- 15.8 This clause 15 survives termination or expiry of this agreement.

16. Mediation

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- 16.1 The parties shall endeavour to settle any dispute arising out of or relating to this agreement, including with regard to its existence, validity or termination in accordance with the Australia Disputes Centre (ADC) Guidelines (**the ADC Guidelines**) for commercial mediation then in force, and agree to be bound by the ADC Guidelines relating to the dispute unless that party has participated in a mediation in accordance with clause 16.
- 16.2 Clause 16 does not apply to an application for urgent interlocutory relief.
- 16.3 A party to this contract claiming that a dispute has arisen from the contract (**the Dispute**) must give written notice to the other party (or parties) setting out the notice of the dispute and all other matters required to be notified in accordance with the ADC Guidelines for commercial mediation.
- 16.4 Except where a party makes an application for urgent interlocutory relief, the parties shall not commence any proceedings in a court of law or any tribunal without first mediating the matter in accordance with this agreement.
- 16.5 The parties must continue to perform their respective obligations under these Terms, even if a dispute exists (including the referral of the dispute to mediation).
- 16.6 The parties must keep all information relating to any dispute confidential for the purposes of dispute resolution, unless otherwise required by law or at the direction of a court of competent jurisdiction. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

17. Guarantee

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- 17.1 The Customer irrevocably and unconditionally agrees to guarantee all payments due and owing to Zimmermann (**the Guarantee Payment**), as and when due, regardless of any defence, right of set-off or counterclaim that the Customer may have or assert.
- 17.2 The Customer's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Customer to Zimmermann.
- 17.3 The Customer agrees that clause 17 is a guarantee of payment and not a guarantee of collection.
- 17.4 Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Customer shall be liable to pay the Guarantee Payment immediately.

18. Governing Law and Jurisdiction

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- 18.1 These Terms are governed by the laws of the State of Victoria.
- 18.2 The parties irrevocably submit to the non-exclusive jurisdiction of the Courts of the State of Victoria and of the Commonwealth of Australia (including any Courts, having appellate jurisdiction) in respect of any dispute between them.
- 18.3 If any provision of these Terms is found to be invalid or unenforceable by a court of law, such invalidity or unenforceability will not affect the remainder of this agreement, which will continue in full force and effect.

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19. Severance

If any provision of these Terms is found to be invalid, void, illegal or unenforceable, that provision will be severed, and the remaining provisions of these Terms will continue to have full force and effect.

20. Privacy

Zimmermann may collect personal and credit information in dealings with the Customer (or any of their guarantors) in accordance with the Zimmermann Privacy Policy pursuant to the Credit Reporting Code, the Privacy Act 1988 (Cth), the Privacy (Enhancing Privacy Protections) Act 2012, and the Australian Privacy Principles. You consent to that information being collected. The Customer can obtain a copy of the Zimmermann Privacy Policy by contacting Zimmermann in writing.

21. General

21.1 Force Majeure

- (a) Unless otherwise expressly provided for in these Terms, neither Party will be liable to the other for the consequences of any delays or failures of its performance which are caused by any event beyond the first Party's reasonable control, including without limitation acts of God, fire, flood, pandemic, accident, terrorism, strike, and riots.
- (b) The Party affected by such circumstances must promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.

21.2 Assignment

- (a) A Party may assign and transfer all its rights and obligations under this Agreement provided that the assignee undertakes in writing to the other Party to be bound by the obligations of the assignor under this Agreement.
- (b) Notwithstanding 20.3(a) this Agreement may not be assigned without the consent of both Parties in writing.

21.3 At any time, Zimmermann may appoint a subcontractor to perform any of Zimmermann's obligations under these Terms.

21.4 Neither Party may issue or make any public announcement or disclose any information regarding this Agreement unless prior to such public announcement or disclosure is approved by the other Party.

21.5 In entering into this agreement, the Customer has not relied on any warranty, representation, or statement, whether oral or written, made by Zimmermann or any of its employees or agents relating to or in connection with the subject matter of this agreement.

21.6 No Waiver - A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

21.7 Notices

- (a) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote (or as varied pursuant to this clause). In addition to any other method of service provided by law, the notice may be sent by pre-paid post to the address of the addressee or sent by email to the addressee.
- (b) A party may only change its postal or email address for service by giving notice of that change in writing to the other party.