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## CyberChill Pty Ltd T/A CyberChill Refrigeration – Terms & Conditions of Trade

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### 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 **"CyberChill"** means CyberChill Pty Ltd T/A CyberChill Refrigeration, its successors and assigns or any person acting on behalf of and with the authority of CyberChill Pty Ltd T/A CyberChill Refrigeration.
- 1.3 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting CyberChill 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 CyberChill 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 **"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.
- 1.6 **"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 using CyberChill's 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 making enquiries via the website.**
- 1.7 **"Price"** means the Price payable (plus any GST where applicable) for the Goods as agreed between CyberChill and the Client in accordance with clause 5 below.
- 1.8 **"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.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that:
- (a) the supply of Goods on credit shall not take effect until the Client has completed a credit application with CyberChill and it has been approved with a credit limit established for the account; and
  - (b) in the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, CyberChill reserves the right to refuse Delivery; and
  - (c) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, CyberChill reserves the right to vary the Price with alternative Goods as per clause 5.2 subject to prior confirmation and agreement of both parties; and
  - (d) CyberChill also reserves the right to halt all Services until such time as CyberChill and the Client agree to such changes. CyberChill shall not be liable to the Client for any loss or damage the Client suffers due to CyberChill exercising its rights under this clause.
- 2.5 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 CyberChill 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 CyberChill 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 CyberChill 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 CyberChill; 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 CyberChill 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 CyberChill as a result of the Client's failure to comply with this clause.

### 5. Price and Payment

- 5.1 At CyberChill's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by CyberChill to the Client; or
  - (b) the Price as at the date of Delivery of the Goods according to CyberChill's current price list; or
  - (c) CyberChill's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

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- 5.2 CyberChill reserves the right to change the Price if a variation to CyberChill's quotation is requested. Variations will be charged for on the basis of CyberChill's quotation, and will be detailed in writing, and shown as variations on CyberChill's invoice. The Client shall be required to respond to any variation submitted by CyberChill within ten (10) working days. Failure to do so will entitle CyberChill to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.3 At CyberChill's sole discretion, a non-refundable deposit may be required.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by CyberChill, which may be:
- (a) before Delivery of the Goods;
  - (b) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by CyberChill.
- 5.5 Payment may be made by cash, cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and CyberChill.
- 5.6 CyberChill may in its discretion allocate any payment received from the Client towards any invoice that CyberChill determines and may do so at the time of receipt or at any time afterwards. On any default by the Client CyberChill may re-allocate any payments previously received and allocated. In the absence of any payment allocation by CyberChill, payment will be deemed to be allocated in such manner as preserves the maximum value of CyberChill's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.7 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 CyberChill nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to CyberChill an amount equal to any GST CyberChill must pay for any supply by CyberChill under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. Product Specifications**
- 6.1 The Client acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in CyberChill's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by CyberChill;
  - (b) while CyberChill may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that CyberChill has given these in good faith, and are estimates based on industry prescribed estimates.
- 6.2 The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
- 7. Delivery of Goods**
- 7.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at CyberChill's address; or
  - (b) CyberChill (or CyberChill's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 7.2 At CyberChill's sole discretion, the cost of Delivery is in addition to the Price.
- 7.3 Any time specified by CyberChill for Delivery of the Goods is an estimate only. The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. CyberChill will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. In the event that the Client is unable to take Delivery of the Goods as arranged then CyberChill shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 8. Risk**
- 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, CyberChill is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by CyberChill is sufficient evidence of CyberChill's rights to receive the insurance proceeds without the need for any person dealing with CyberChill to make further enquiries.
- 8.3 If the Client requests CyberChill to leave Goods outside CyberChill'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.
- 9. Title**
- 9.1 CyberChill and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid CyberChill all amounts owing to CyberChill; and
  - (b) the Client has met all of its other obligations to CyberChill.
- 9.2 Receipt by CyberChill 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 CyberChill on request;
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for CyberChill and must pay to CyberChill the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;

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- (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 CyberChill and must pay or deliver the proceeds to CyberChill 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 CyberChill and must sell, dispose of or return the resulting product to CyberChill as it so directs;
- (e) the Client irrevocably authorises CyberChill to enter any premises where CyberChill believes the Goods are kept and recover possession of the Goods;
- (f) CyberChill 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 CyberChill;
- (h) CyberChill 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 and/or collateral (account) – being a monetary obligation of the Client to CyberChill for Services – that have previously been supplied and that will be supplied in the future by CyberChill 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 CyberChill 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, CyberChill 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 CyberChill;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of CyberChill;
  - (e) immediately advise CyberChill 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.
- 10.4 CyberChill 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 CyberChill, 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 CyberChill 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.

**11. Security and Charge**

- 11.1 In consideration of CyberChill agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Client indemnifies CyberChill from and against all CyberChill's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising CyberChill's rights under this clause.
- 11.3 The Client irrevocably appoints CyberChill and each director of CyberChill 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 on Delivery and must notify CyberChill immediately of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote.
- 12.2 The Client must notify any other alleged defect in the Goods within forty eight (48) hours or as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow CyberChill to inspect the Goods.
- 12.3 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**).
- 12.4 CyberChill acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.5 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, CyberChill makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. CyberChill's liability in respect of these warranties is limited to the fullest extent permitted by law.

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- 12.6 If the Client is a consumer within the meaning of the CCA, CyberChill's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.7 If CyberChill is required to replace the Goods under this clause or the CCA, but is unable to do so, CyberChill may refund any money the Client has paid for the Goods.
- 12.8 If the Client is not a consumer within the meaning of the CCA, CyberChill's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty (including but not limited to complying with all laws concerning labelling, use, operation and disposal of the Product) provided to the Client by CyberChill at CyberChill's sole discretion;
  - (b) limited to any warranty to which CyberChill is entitled, if CyberChill did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 12.9 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) CyberChill 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.
- 12.10 Notwithstanding clauses 12.1 to 12.9 but subject to the CCA, CyberChill 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;
  - (b) the Client using the Goods for any purpose other than that for which they were designed;
  - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Client failing to follow any instructions or guidelines provided by CyberChill;
  - (e) fair wear and tear, any accident, or act of God.
- 12.11 CyberChill may in its absolute discretion accept non-defective Goods for return in which case CyberChill may require the Client to pay handling fees of up to twenty five percent (25%) of the value of the returned Goods plus any freight costs.
- 12.12 Notwithstanding anything contained in this clause if CyberChill is required by a law to accept a return then CyberChill will only accept a return on the conditions imposed by that law.

### 13. Intellectual Property

- 13.1 CyberChill's Goods incorporate its copyright, patent, design and trademark rights (CyberChill's Intellectual Property) which remain CyberChill's permanent property.
- 13.2 CyberChill grants to the Client and any person thereafter holding any interest in the Goods, the right to use CyberChill's Intellectual Property only to the extent of use of the Goods in its intended operation and not otherwise.
- 13.3 The Goods will display CyberChill's trade mark and other markings (CyberChill's markings) which are part of CyberChill's Intellectual Property. It is a condition of this Contract that the Client will maintain all CyberChill's markings as they appear at the time of delivery and will not remove, deface, obscure or cover any of them so that they are less conspicuous than the time of delivery; all markings indicating the name CyberChill shall be maintained to be visible and in good order and condition during operation of the Goods.
- 13.4 The Client acknowledges that CyberChill is selling the Goods on the condition that the Client will not infringe any of CyberChill's Intellectual Property rights. The Client acknowledges that damages alone does not comprise an adequate remedy for such a breach and CyberChill shall have the right without diminution of any of CyberChill's statutory rights to protect its interests by injunction or any other appropriate processes including the taking of possession of infringing matter.
- 13.5 In the event that the Client shall make any drawing, diagram, picture, photograph, electronic representation, electronic program (representation) whereby the whole or any part of the Goods is represented, the Client agrees that the representation shall be CyberChill's copyright property and its rights relating thereto shall be as owner.

### 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 CyberChill'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 CyberChill any money the Client shall indemnify CyberChill from and against all costs and disbursements incurred by CyberChill in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, CyberChill's contract default fee, and bank dishonour fees).
- 14.3 Further to any other rights or remedies CyberChill may have under this Contract, if a Client has made payment to CyberChill, 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 CyberChill 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 CyberChill's other remedies at law CyberChill shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to CyberChill shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to CyberChill becomes overdue, or in CyberChill'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 CyberChill;
  - (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 CyberChill may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions CyberChill may suspend or terminate the supply of Goods to the Client. CyberChill will not be liable to the Client for any loss or damage the Client suffers because CyberChill has exercised its rights under this clause.
- 15.2 CyberChill 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 CyberChill shall repay to the Client any money paid by the Client for the Goods. CyberChill 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 the Client shall be liable for any and all loss incurred (whether direct or indirect) by CyberChill as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

**16. Privacy Policy**

- 16.1 All emails, documents, images or other recorded information held or used by CyberChill is Personal Information, as defined and referred to in clause 16.3, and therefore considered Confidential Information. CyberChill 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 III C 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"). CyberChill acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by CyberChill that may result in serious harm to the Client, CyberChill 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 CyberChill in respect of Cookies where the Client utilises CyberChill's website to make enquiries. CyberChill 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 CyberChill when CyberChill sends an email to the Client, so CyberChill may collect and review that information ("collectively Personal Information")
- If the Client consents to CyberChill's use of Cookies on CyberChill's website and later wishes to withdraw that consent, the Client may manage and control CyberChill's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 16.3 The Client agrees that CyberChill 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.
- 16.4 The Client consents to CyberChill being given a consumer credit report to collect overdue payment on commercial credit.
- 16.5 The Client agrees that personal credit information provided may be used and retained by CyberChill for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 16.6 CyberChill 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.
- 16.7 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 CyberChill 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 (provided CyberChill is a member of an approved QAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and CyberChill has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of CyberChill, 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).
- 16.8 The Client shall have the right to request (by e-mail) from CyberChill:
- (a) a copy of the Personal Information about the Client retained by CyberChill and the right to request that CyberChill correct any incorrect Personal Information; and
  - (b) that CyberChill does not disclose any Personal Information about the Client for the purpose of direct marketing.

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- 16.9 CyberChill 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.
- 16.10 The Client can make a privacy complaint by contacting CyberChill via e-mail. CyberChill 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 CyberChill for repair, modification, exchange or for CyberChill to perform any other service in relation to the item and CyberChill has not received or been tendered the whole of any monies owing to it by the Client, CyberChill shall have, until all monies owing to CyberChill 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 CyberChill shall continue despite the commencement of proceedings, or judgment for any monies owing to CyberChill 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 CyberChill may have notice of the Trust, the Client covenants with CyberChill 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 CyberChill (CyberChill 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. General**
- 20.1 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.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which CyberChill has its principal place of business, and are subject to the jurisdiction of the Parramatta Courts.
- 20.3 Subject to clause 12, CyberChill 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 CyberChill of these terms and conditions (alternatively CyberChill's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 20.4 CyberChill may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 20.5 The Client cannot licence or assign without the written approval of CyberChill.
- 20.6 CyberChill 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 CyberChill's sub-contractors without the authority of CyberChill.
- 20.7 The Client agrees that CyberChill 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 CyberChill to provide Goods to the Client.
- 20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party.
- 20.9 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.