

**1. DEFINITIONS AND INTERPRETATION**

Definitions and rules of interpretation are set out in clause 17.

**2. GENERAL**

2.1. **Application:** These Terms and Conditions are incorporated into any contract between an Immij Entity and the Customer for the supply of Goods and/or services by an Immij Entity to the Customer and shall apply to the exclusion of all terms and conditions conflicting with or purporting to modify them whether issued before or after the date these Terms and Conditions come into effect (including but not limited to any terms and conditions on any order form or request form produced by the Customer), except where otherwise agreed by the Immij Entities and the Customer in a document signed by both parties.

2.2. **Amendment:** The Immij Entities may at any time change these Terms and Conditions by publishing new terms and conditions on their website, in which case the new terms and conditions will come into effect one month after the new terms and conditions are so published. The new terms and conditions will come into effect notwithstanding that the Customer does not receive notice (including if the notice was accidentally omitted to be given).

**3. QUOTES AND ORDERS**

3.1. **Immij may provide a Quote:** Where the Customer requests an Immij Entity to supply goods and/or services to the Customer, any Immij Entity may give the Customer a written quote specifying:

- (a) the work required to be performed in order to fulfil the Customer's instructions; and
- (b) an estimate of the Immij's Entity's fees and charges for performing that work.

3.2. **Acceptance by Customer:** When an Immij Entity has given the Customer the Quote:

- (a) the Immij Entity need not commence work until the Quote has been accepted by the Customer;
- (b) the Customer may accept the Quote (orally or in writing, including email) and unless and until that time a Quote does not give rise to a binding contract;
- (c) acceptance by the Customer of the Quote will constitute a contract between the Customer and the Immij Entity which incorporates these Terms and Conditions;
- (d) the Immij Entity reserves the right to correct any obvious errors in the Quote, whether technical, stenographic or otherwise.

3.3. **Quote evidence of instructions:** If a Quote is accepted by the Customer:

- (a) the Quote shall be carried out and the Customer shall pay for the Work in accordance with these Terms and Conditions;
- (b) the Quote will be conclusive proof of the Customer's instructions (written and verbal) and the Order;
- (c) unless otherwise agreed in writing by Immij, the Order may not be cancelled by the Customer.

3.4. **Validity of Quote:** A Quote:

- (a) only remains valid for 7days from the date it is given; and
- (b) may be withdrawn by Immij at any time by notice to the Customer.

3.5. **Variations and Estimates:** An Estimate is based on the current cost of production and is subject to amendment before or after acceptance of the Quote to meet any cost variation between the date of the Quote and the date of execution of the Order. Immij may amend an Estimate at any time before the Order is completed to take into account any rise or fall in the cost of performing the Order.

3.6. **Periodicals:** If an Order relates to more than one issue of a periodical:

- (a) each issue will, for the purposes of these Terms and Conditions, be considered to be one Order;
- (b) a party may terminate a contract for periodicals to which these Terms and Conditions apply where:
  - (i) in the case of periodicals published weekly or more frequently, that party has given 4 weeks' notice of that party's intention to terminate the contract;
  - (ii) in the case of periodicals published fortnightly or more frequently (but less frequently than weekly), that party has given 8 weeks' notice of that party's intention to terminate the contract;
  - (iii) in the case of periodicals published less frequently than fortnightly, that party has given 13 weeks' notice of that party's intention to terminate the contract.

3.7. **Refusal to Sell:** Immij may refuse at its discretion to sell Goods to the Customer at any time, including whether or not part of a contract has been performed, where the Goods are unavailable for any reason, a non-complying Order is received or the Customer has defaulted under these terms and conditions.

3.8. **Written Orders:** All communications between Immij and the Customer including all Orders must be in writing, unless such obligation is waived by Immij.

3.9. **Authority:** Unless Immij agrees to special arrangements, such as an authorisation code, Immij is entitled to assume any Order received from anyone employed by the Customer or acting on the Customer's behalf has been placed with the Customer's authority and is binding on the Customer.

**4. CHARGES**

4.1. **Invoice:** Subject to clause 6.6, when the Order has been completed, Immij may issue an invoice to the Customer for the amount of the Estimate or if no Estimate was given, an amount representing Immij's charge for the Work performed, and for any of the other charges specified in clause 4.2.

4.2. **Charges additional to Estimate:** Except to the extent that such costs are expressly included in any Quote, Immij may charge the following to the Customer in addition to the Estimate:

- (a) fees for any Preliminary Work performed at the Customer's request;
- (b) fees for Additional Work required to be done as a result of the Customer changing the Customer's instructions;
- (c) fees for having to work from a poor copy;
- (d) fees for any additional proofs required;
- (e) fees for work which involves tables or foreign language and which was not notified to Immij before the Quote was prepared;
- (f) fees for additional work required to be done as a result of author's corrections, including repagination or reformatting;
- (g) fees and other charges for work required to be done urgently, including any overtime costs;
- (h) fees for handling or storing material or equipment supplied by the Customer for the purposes of the Order;
- (i) fees for changing or correcting, in order to ensure that the Goods are properly produced, any plates, film, bromides, artwork or any document including computer files, or any other materials which are unsuitable or substandard (including any supplied in accordance with clause 13), supplied for the purposes of the Order by the Customer;
- (j) freight and/or installation costs and charges;
- (k) other charges, fees or disbursements referred to in these Terms and Conditions and not specified in this clause.

4.3. **Under/Over Supplies:** The Customer acknowledges that while Immij will endeavour to produce the exact number of items in the Order, owing to human and/or machine/computer error the number of items actually produced may be up to 5% over or under the number specified in the Order. Where such a discrepancy occurs, Immij will adjust the amount charged to the Customer at a pro-rata rate to reflect the actual number of items produced.

4.4. **Alterations to style, layout etc:** If, before the Quote is prepared, the Customer does not give Immij specific instructions in relation to style, type or layout:

- (a) Immij may use any style, type and layout which, in Immij's opinion, is appropriate; and
- (b) Immij may charge an additional amount for any additional work required to be done (including the production of additional proofs) as a result of the Customer subsequently altering the style, type or layout used by Immij.

4.5. **Overset:** The Customer must pay for overset matter (being matter produced on the Customer's instructions but not used in a publication for which it was intended). The Customer may instruct Immij to retain overset matter for future issues of the publication or to discard the overset matter.

4.6. Immij may change the price of Goods at any time without prior notice, except where Immij have quoted the price to the Customer in a valid written Estimate issued by Immij to the Customer, and the terms set out in that Estimate say otherwise, subject to clause 4.2.

4.7. Any description of Goods is given by way of identification only and the use of that description does not constitute a sale by description.

4.8. The Customer is responsible for ensuring that the type of Goods ordered are suitable for the Customer or its nurseries' intended use of them and Immij is not liable to the Customer for any Goods ordered which are unsuitable for the Customer's or its nurseries' intended use.

4.9. **GST and Taxes:** The Estimate shall be increased by the amount of any GST and other taxes and duties which may be applicable, except:

- (a) to the extent such taxes are expressly included in the Quote; and
- (b) all out-of-pocket expenses referred to in these Terms and Conditions are GST inclusive.

**5. DELIVERY**

5.1. **Time and place:** Delivery is to be made at the place specified in the Quote. Any time stated for delivery is an estimate only. Immij is not liable for any delay in delivery.

5.2. **Collection:** Where Customer is to collect the Goods, the Customer must do so from Immij's premises upon being notified by Immij that the Goods are ready for collection.

5.3. **Delivery costs:** If Immij agrees to deliver the Goods, the Customer shall bear all freight costs and charges associated with that delivery, which shall include (but not be limited to) all costs and expenses incurred by Immij in removing the Goods from its premises, whether by way of actual or attempted delivery to the Customer or otherwise. Unless otherwise agreed by Immij in writing, the means of delivering goods shall be at Immij's discretion as to whether such delivery is effected by road, air, rail or post.

5.4. **Defects:** The Customer shall inspect the Goods immediately upon delivery to the Customer. Any claim by the Customer relating to any defect in the Goods, or defect in work performed by Immij, or any shortage or other non-conformity to an Order shall be made in writing with full details and supporting evidence and given to Immij:

- (a) if Immij is required to deliver the Goods to the Customer's premises - within 5 days of delivery;
- (b) otherwise - within 5 days of notification that the Goods are ready for collection. Unless such written claim is received by Immij within the specified period, the Customer shall be deemed to have accepted the condition of the Goods, conformity of the Goods and the completion of the Work to the Order. Notwithstanding that a claim has been made by the Customer, the Customer shall pay for the Goods pending determination of the claim by Immij.

5.5. **Refusal by Customer:** If the Customer refuses to accept delivery of any Goods, Immij may charge the Customer for any additional costs incurred as a result, including storage and transportation costs.

**6. PAYMENT**

6.1. **Time for payment:** Payment for Goods is required upon acceptance of a Quote by the Customer unless Immij has approved a credit account for the Customer. Where Immij has approved a credit account for the Customer, the Customer must pay the amount set out in an invoice issued by Immij within 30 days of the invoice date and Immij may:

- (a) alter terms of payment with effect from the date it notifies the Customer of such change; and
- (b) alter or remove the credit limit at its discretion with effect from the date Immij notifies the Customer of such alteration. Where the credit limit is exceeded then, notwithstanding anything to the contrary, Immij may with immediate effect and without further notice:
  - (i) refuse to supply Goods to the Customer; or
  - (ii) require security in a form satisfactory to Immij; or
  - (iii) alter terms of payment to cash on delivery.

6.2. **Credit Card:** If at any time Immij notifies the Customer that it accepts payment of Immij's invoices by credit card and the Customer pays in this way, Immij is entitled to require the Customer to reimburse Immij for any fees incurred by Immij or deducted from the payment to Immij.

6.3. **Interest:** If the Customer defaults in the payment of any sum of money due to Immij, Immij may charge interest at the rate specified from time to time under the *Penalty Interest Rates Act (Vic)* computed in respect of the amount of which default is made and the period of such default, and may cancel any Orders in existence (without prejudice to any other rights or remedies of Immij).

6.4. **Allocation:** Unless Immij expressly agrees to the contrary in writing, if one or more of its invoices are outstanding, all of the proceeds of any payment made by the Customer (or on the Customer's behalf) will be allocated and credited: first, to any interest accrued on any outstanding invoices; secondly, to the oldest invoice outstanding; and then, to each more recent invoice (in order from the oldest to the most recent) until all invoices are paid in full.

6.5. **Set-Off:** The Customer must make all payments to Immij in accordance with these Terms and Conditions without set-off, deduction or counterclaim.

6.6. **Advance and progress payments:** Immij may:

- (a) issue an invoice for the amount of the Estimate before commencing the Order if it wishes to do so; and
- (b) if Immij is of the view that completing the Order will take more than a month, at any time before the Order is completed, issue one or more invoices for a proportion of the amount of the Estimate (the proportion to be at Immij's discretion) or require a proportion of the Estimate to be paid in advance of any Work being done.

- 6.7. **Suspension of Work:** If the Order is suspended for more than 30 days at the request of the Customer or as a result of something for which the Customer is responsible, Immij may issue an invoice for a particular sum (to be specified by Immij) for the Work already done and for other costs incurred by Immij (including without limitation, storage costs).
- 6.8. **Suspension of Account:** If any invoice is not settled within Immij trading terms, the Customer agrees that, in addition to any other right Immij may have, Immij may:
- suspend all sales and delivery of Goods to the Customer or to the relevant nurseries; or
  - request that future orders be paid cash on delivery, and
  - Immij will not be liable to the Customer for any loss or damage the Customer suffers because Immij exercises its rights under this clause.
- 6.9. **Damages:** The Customer must pay to Immij any costs, expenses or losses incurred by Immij as a result of the Customer's failure to pay to Immij on the due date all sums outstanding from the Customer to Immij (including, without limitation, any debt collection and legal costs).

## 7. CONTENT

- 7.1. **General Indemnity:** The Customer acknowledges and agrees that it provides the content for the Goods and that Immij will not be liable or responsible in relation to the content regardless of whether Immij supplies copyright of it.
- 7.2. **Pictures:** The Customer acknowledges that the pictures appearing on the Goods may include pictures supplied by Immij or by a third party and that the Customer must adhere to copyright laws in regards to such pictures.

## 8. DEFAULT AND TERMINATION

- 8.1. **Termination:** Upon the occurrence of an Event of Default, Immij may by notice in writing to the Customer:
- elect that all monies owing by the Customer to Immij on any account whatsoever become immediately due and payable in full by the Customer;
  - not be liable to the Customer for any loss or damage the Customer suffers because Immij exercises its rights under this clause; and/or
  - cancel all or any part of any of the Customer's Orders which remain unfulfilled;
  - terminate a contract or all or any contracts with the Customer;
- 8.2. **Notification of Event of Default:** The Customer must give Immij full details of any Event of Default as soon as it becomes aware that the Event of Default has occurred.
- 8.3. **Rights:** the Customer's right to possess, use up, sell or otherwise deal with Goods in respect of which title has not passed to the Customer under clause 12.1 will cease and Immij will be entitled to enter any premises where the Goods in respect of which title has not passed to the Customer under clause 12.1 are kept, and remove, repossess and re-sell all or any such Goods. Immij is not liable to the Customer if Immij takes such action.

## 9. RISK

- 9.1. **Risk:** The risk of any loss, damage or deterioration of the Goods passes to the Customer:
- if Immij agrees to deliver the Goods - at the time of delivery;
  - otherwise - at the time Immij notifies the Customer that the Goods are ready for collection.
- 9.2. **Risk on rejection:** If the Customer validly rejects the Goods in accordance with these Terms and Conditions, risk in the rejected Goods reverts to Immij:
- if the Goods are at Immij's premises, at the time the Customer notifies Immij that the Goods are rejected;
  - if the Goods are in the Customer's possession at the time that the Goods are returned to Immij (in the same condition in which they were delivered to Customer) during usual business hours and Immij acknowledges receipt of them.
- 9.3. **Insurance:** If any Goods are damaged or destroyed prior to property in them passing to the Customer, Immij is entitled without prejudice to any of its other rights or remedies under the terms and conditions (including the right to receive payment of all the balance of the price for Goods) to receive all insurance proceeds payable for the Goods. This applies whether or not the price has become payable under contract. The production of these terms and conditions by Immij is sufficient evidence of its right to receive the insurance proceeds without the need for any person dealing with Immij to make further enquiries.

## 10. OWNERSHIP

- 10.1. **Retention of ownership:** Notwithstanding that risk may have passed to the Customer, until the Customer has paid all sums outstanding in relation to the Goods and all the other amounts owing by the Customer to any or all of the Immij Entities from time to time:
- property and title in the Goods shall not pass from Immij to the Customer;
  - if the Goods are in the Customer's possession, the Customer holds the Goods as trustee for Immij and must store the Goods separately and clearly identify them as the property of Immij;
  - Immij may call for and recover possession of the Goods and the Customer must deliver the Goods to Immij if so directed by Immij. For this purpose, in the event that the permission of any third party is required for access to repossess the Goods, the Customer shall obtain that permission at its own expense and Immij's employees or agents may enter the Customer's premises and take possession of the Goods without liability to the Customer.
- 10.2. **Payment:** Payment in full will not be regarded as having been received by Immij unless and until payment is made in cleared funds.
- 10.3. **Ordinary business:** The Customer may, in the ordinary course of the Customer's business, use the Goods or sell the Goods to a third party for full consideration but:
- the proceeds of sale and any book debt created upon the sale of the Goods to the third party shall be held by the Customer as trustee for Immij and the Customer must account to Immij for those sums; and
  - if Immij requires, the Customer must assign to Immij the Customer's claim against the third party and must execute all documents necessary to effect that assignment; provided that the authority under this clause shall be revoked from the time that an Event of Default occurs or Immij notifies the Customer that it is revoked.
- 10.4. **General lien:** Immij shall, in respect of all sums owed by the Customer to Immij, have a general lien on all property of the Customer in Immij's possession and may, after 14 days' notice to the Customer, sell that property and apply the proceeds (net of any sale costs) in satisfaction of all or any part of the sums owed. In the event that any of the Customer's property held by Immij as aforesaid enjoys copyright protection in favour of the Customer, the Customer hereby grants to Immij a licence to exercise the rights conferred on Immij under this clause.
- 10.5. **Insurance:** Until property in the Goods passes to the Customer, the Customer shall keep the Goods insured in the name of Immij and the Customer for their respective rights and interests and will produce to Immij, upon demand, evidence of such insurance. If the Customer fails to so insure the Goods, Immij may do so and the cost of such insurance shall be payable by the Customer to Immij upon demand.

## 11. LIABILITY

- 11.1. **Non-excludable Rights:** The parties acknowledge that, under applicable State and Commonwealth law, certain clauses, conditions, guarantees and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the

Customer in relation to the provision of the Goods or of services which cannot be excluded, restricted or modified by agreement ("**Non-excludable Rights**").

- 11.2. **Disclaimer of Liability:** Except to the extent of Non-excludable Rights, Immij will not be liable for:
- any claim by the Customer or any other person, including without limitation, any claim relating to or arising from all clauses, conditions, guarantees and warranties expressed or implied, and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom or usage or otherwise; and
  - any representations, warranties, conditions or agreement made by any agent or representative which are not expressly confirmed by Immij in writing, and the liability of Immij for any such matters is hereby excluded.
- 11.3. **Defective Goods:** Where (and to the extent) permitted by law, the liability of Immij for a breach of a Non-excludable Right is limited, at Immij's option, to one of the following:
- in the case of goods:
    - the replacement of the goods or supply of equivalent goods;
    - repair of the goods;
    - payment of the cost of replacing the goods or acquiring equivalent goods; or
    - payment of the cost of having the goods repaired.
  - in the case of services:
    - the supply of the services again; or
    - the payment of the cost of having the services supplied again, provided that:
  - all claims are reported to Immij:
    - if Immij is required to deliver the Goods to the Customer's premises - within 5 days of delivery;
    - otherwise - within 5 days of notification that the Goods are ready for collection; and
  - all such claims are fully documented giving details of supply and the alleged damage or defect.
- 11.4. **Indirect losses:** Notwithstanding any other provision, Immij is in no circumstance (whatever the cause) liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for:
- any increased costs or expenses;
  - any loss of profit, revenue, business, contracts or anticipated savings;
  - any loss or expense resulting from a claim by a third party; or
  - any special, indirect or consequential injury loss, damage or expense whatsoever and howsoever arising.
- 11.5. **Force Majeure:** Immij will have no liability to the Customer in relation to any loss, damage or expense caused by Immij's failure to complete the Order or to deliver the Goods as a result of act of God, fire, flood, tempest, earthquake, riot, civil disturbance, industrial dispute, theft, crime, strike, lockout, work stoppage or other labour hindrance, breakdown, act of war (whether declared or not), sabotage, insurrection, epidemic, national emergency (whether in fact or law), requirements of restriction of, or failure to act by, any government, local body or judicial entity, the inability of Immij's normal suppliers to supply necessary materials or any other matter beyond Immij's control. Without limitation to this provision, and notwithstanding the other provisions of these Terms and Conditions, should Immij be prevented from delivering Goods or commencing or completing Work due to any circumstances beyond Immij's control:
- the time for delivery of the Goods or completion of the Work shall be extended by the period in which the circumstance exists; and/or
  - Immij may at its sole discretion cancel or annul the Order to which the Goods or Work relates without any penalty or expenses or claims against Immij.
- 11.6. **Electronic data:** Without limiting the generality of the foregoing clauses, Immij will not be liable to the Customer for loss, however caused, of any data stored on disks, tapes, compact disks or other media supplied by the Customer to Immij.
- 11.7. **Proofs:** If Immij submits to the Customer a proof of the Goods Immij will not be responsible for any errors in the Goods which appeared in the proof and which were not corrected by the Customer before the Order was completed. There is no guarantee that production prints exactly match colour proofs because of variations in proof preparation methods and substrates. However, Immij will use all reasonable endeavours to provide a commercially acceptable finished product.

## 12. OUTSIDE WORK

- 12.1. If Immij has to obtain goods (including typefaces, bromides, film, plates, ornaments or artwork) and/or services not normally stocked or supplied by Immij from a third party in order to carry out the Customer's instructions:
- Immij will not be liable for any breach of these Terms and Conditions if that breach is a result of or is connected with the supply by the third party of the goods and/or services;
  - Immij acquires the goods and/or services as agent for the Customer and not as principal and will have no liability to the Customer in relation to the supply of those goods and/or services. Any claim by the Customer in relation to the supply of those goods and/or services must be made directly against the third party;
  - the Customer must pay for such goods and/or services; and
  - property in any goods obtained from a third party and incorporated into the Goods passes to Immij at the time of incorporation.

## 13. CUSTOMER'S PROPERTY

- 13.1. **Material supplied by Customer:** If Immij and the Customer agree that the Customer is responsible for supplying materials or equipment for the purposes of the Order:
- the Customer must supply sufficient quantities of materials to allow for spoilage, such quantity to be specified by Immij;
  - Immij will not normally count or check the materials and if requested by the Customer to do so, may charge for counting or checking;
  - Immij will not be responsible for any defects in the Goods which are caused by defects in or the unsuitability of materials or equipment supplied by the Customer;
  - property in any materials supplied by the Customer and incorporated into the Goods passes to Immij at the time of incorporation.
- 13.2. **Property left with Immij:** If the Customer leaves property in Immij's possession without specific instructions as to what is to be done with it, Immij may, six months after gaining possession of the property, dispose of or sell the property and retain any proceeds of sale as compensation for holding and handling the property.
- 13.3. **Responsibility to insure:** Immij has no obligation to insure any property of the Customer in Immij's possession. The Customer must pay the cost of any insurance arranged by Immij at the request of the Customer.
- 13.4. **Customer's property:** Immij will hold any property of the Customer at the Customer's risk.

## 14. OWNERSHIP AND INTELLECTUAL PROPERTY

- 14.1. **Ancillary materials:** Unless Immij and Customer agree otherwise in writing, drawings, sketches, paintings, photographs, designs, typesetting, dummies, models, negatives, positives, blocks, engravings, stencils, dies, plates or cylinders, electros, stereos, disks, tapes, compact disks or any other media and other material produced by

- Immij in the course of or in preparation for performing the Order (whether or not in fact used for the purposes of performing the Order) are the property of Immij.
- 14.2. **Copyright:** The copyright in all artistic and literary works authored by Immij shall be the property of Immij. The Customer:
- warrants that the Customer has copyright or a licence to authorise Immij to reproduce all artistic or literary works supplied by the Customer to Immij for the purposes of the Order and the Customer hereby expressly authorises Immij to reproduce all and any of such works for those purposes; and
  - must indemnify Immij against all liability, losses or expenses incurred by Immij in relation to or in any way directly or indirectly connected with any breach of copyright or of any rights in relation to copyright; and
  - is hereby granted a non-exclusive licence to use the copyright in any literary and/or artistic works authored by Immij for the purposes of the Order, provided that the exercise of such licence is conditional upon Immij having received all monies due to Immij under these Terms and Conditions.
- 14.3. **Intellectual Property Rights:** The Customer warrants that the use by Immij of any designs or instructions supplied by the Customer will not infringe any intellectual property of any other person and the Customer indemnifies Immij against any claim relating to or arising from the infringement of any intellectual property of any other person.
- 14.4. **Illegal matter:** Immij is not obliged to print any illegal or libellous matter and the Customer agrees to indemnify Immij against any claim relating to or arising from the printing of such matter.
- 14.5. **Ideas:** The Customer must keep confidential and not use any ideas communicated by Immij to the Customer without Immij's prior written consent.
- 14.6. **Electronic/magnetic media:** All disks, tapes, compact disks or other media (other than media supplied by the Customer) used by Immij to store data for the purposes of completing the Order are the property of Immij. The Customer cannot require Immij to supply to the Customer any data so stored, but in the event that Immij agrees to do so, Immij may charge for supplying such data to the Customer.
- 14.7. **Storage of electronic data:** Immij will not be responsible for storing any data on disks, tapes, compact disks or other media when the Order has been completed. If Immij agrees to store such data, Immij may charge for doing so.
- 15. PERSONAL PROPERTY SECURITIES ACT**
- 15.1. **Consent:** The Customer irrevocably consents to Immij registering its security interest on the Personal Property Securities Register (as defined under the PPSA to note its interest under these Terms and Conditions.
- 15.2. **Provision of information:** The Customer must do all things (including signing any document) and provide all information necessary to enable Immij to perfect and maintain the perfection of any and each security interest granted to Immij by the Customer.
- 15.3. **Costs:** If required by Immij, the Customer must pay all costs associated with the registration, maintenance and withdrawal of any security interest on the Personal Property Securities Register which secures the Customer's obligations under any agreement with Immij.
- 15.4. **Charge:** If required by Immij, the Customer agrees to immediately execute a charge over all of its circulating and non-circulating assets (as defined in the PPSA) and/or any other instrument of security, in terms satisfactory to Immij.
- 15.5. **Title:** Immij's title to the Goods remains absolute even if the Goods have become fixtures to the premises of the Customer or another party or if the Goods become commingled in any way.
- 15.6. **Goods:** Until title in the Goods pass to the Customer, the Customer will keep and maintain all Goods free of any charge, lien or security interest except as created under the Terms and not otherwise, deal with the Goods in a way that will or may prejudice the rights of Immij under the Terms or the PPSA.
- 15.7. **Waiver:** The Customer waives its rights to receive notices of:
- the removal of an accession under section 95 of the PPSA;
  - a proposal to dispose of secured property under section 130 of the PPSA;
  - a statement of account under sections 132(3)(d) and 132(4) of the PPSA;
  - any other occurrence in respect of which the parties agree to waive notice under the PPSA at any time;
  - to redeem secured property under section 142 of the PPSA; and
  - to reinstate this agreement under section 143 of the PPSA.
- 15.8. **Rights:** The rights and powers conferred on Immij by the Terms and Conditions or the law are in addition to any rights and powers conferred by the PPSA.
- 15.9. **Action after default:** For the avoidance of doubt, in addition to the powers under section 125 of the PPSA, Immij may take any action after default authorised by the Terms or the law, including delaying any disposal, leasing or action to retain any secured property.
- 15.10. **Waiver of notice:** The Customer waives its rights to receive notice from Immij of a registration event under section 157(1) of the PPSA.
- 16. USE OF GOODS**
- 16.1. **Business purposes:** In relation to the sale of Goods by Immij to the Customer, the Goods sold are to be used by the Customer wholly or mainly for business purposes and shall represent an expense necessarily incurred in carrying on that business and, further, the Goods purchased shall be intended either for resupply in the ordinary course of the Customer's business or be incorporated in other goods for the purposes of transforming or incorporating them in other goods to be used in the ordinary course of the business.
- 17. DEFINITIONS AND INTERPRETATION**
- 17.1. **Definitions:** In these Terms and Conditions:
- "**Additional Work**" includes all Work undertaken by Immij as a consequence of the Customer's variation, alteration or modification of its instructions in relation to the Order;
- "**Business Day**" means a day on which banks are open for general banking business in Victoria (other than a Saturday, Sunday or public holiday);
- "**Customer**" means the customer for whom the Work is being carried out and where the Customer is more than one person or entity, liability of the Customer shall be joint and several;
- "**Estimate**" means the estimate referred to in clause 3.1(b), as varied pursuant to these Terms and Conditions;
- "**Event of Default**" means an event where the Customer:
- fails to comply with the terms of any contract between the Customer and Immij including these Terms and Conditions; or
  - being an individual is declared bankrupt or becomes of unsound mind; or
  - enters into any composition or arrangement with its creditors or goes into liquidation (voluntarily or otherwise) or has a receiver or liquidator or trustee or statutory manager or administrator or inspector or similar official under any companies or securities or other legislation appointed over all or part of its assets;
  - undergoes a change in its control or ownership, or has a conflict with Immij's interests or the interest of any party related to it which Immij considers sufficiently inappropriate;
  - ceases or threatens to cease to carry on all, or substantially all of its business or operations;
- becomes or is declared insolvent or is unable or deemed to be unable to pay its debts, or stops or threatens to stop payments generally; or
  - any cheque tendered by the Customer or on the Customer's behalf is dishonoured for payment; or
  - the Customer fails to comply with any demand for payment issued by Immij; or
  - any analogous event;
- "**Goods**" means the final goods produced by Immij by completing an Order;
- "**Immij Entity**" means each of Immij Pty Ltd, ABN 37 128 750 247 and Immij (NSW) Pty Ltd, ABN 46 136 867 751 and "**Immij Entities**" means all of them;
- "**Immij**" means, in respect of any Quote, Order, goods or Work or the supply or proposed supply of goods or services, the Immij Entity which provides the Quote, supplies or agrees to supply the Goods or Work or supplies or agrees to supply the goods or services;
- "**Order**" means an order in respect of which a Quote has been given by Immij and accepted by the Customer in accordance with these Terms and Conditions;
- "**PPSA**" means the *Personal Property Securities Act 2009* (Cth);
- "**Preliminary Work**" means all and any work performed by Immij at the Customer's express or implied request, the performance of which work was necessary to enable the Order to be commenced and which work was not within the reasonable contemplation of Immij at the time when Immij supplied the Estimate;
- "**Quote**" means the quote described in clause 3.1; and
- "**State**" means the State of Victoria, except in respect of any Quote, Order, Goods or Work or supply or proposed supply goods or services by Immij (NSW) Pty Ltd ABN 46 136 867 751, in which case State shall mean the State of New South Wales;
- "**Work**" means the work that is the subject of the Order.
- 17.2. **General:** In these Terms and Conditions, unless the context otherwise requires:
- the singular includes the plural and vice versa;
  - a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns;
  - where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
  - a reference to a period of time is to a calendar period.
- 17.3. **Headings:** In these Terms and Conditions, headings are for convenience only and do not affect interpretation.
- 17.4. **Business Day:** If the day on which any act, matter or thing is to be done is not a Business Day, that act, matter or thing may be done on the next Business Day.
- 17.5. **Notices:** Unless otherwise specified, a notice, consent or other communication under or in connection with these Terms and Conditions must be in writing and may be delivered or sent by pre-paid mail to that person's address or sent by fax to that person's fax number (provided the machine from which it is sent produces a report that states that it was sent in full). A notice, consent or other communication that complies with this clause is regarded as given and received:
- if it is delivered or sent by fax:
    - by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
    - after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and
  - if it is sent by mail - two Business Days after posting.
- 17.6. **Assignment:** The Customer may only dispose of, declare a trust over or otherwise create an interest in its rights under a contract with Immij with Immij's consent, which may be withheld in its absolute discretion.
- 17.7. **Severability:** Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down, then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.
- 17.8. **Governing law and jurisdiction:** These Terms and Conditions are governed by the law in force in the State and the parties submit to the non-exclusive jurisdiction of the courts of that State and any courts which may hear appeals from those courts in respect of any proceedings in connection with these Terms and Conditions.
- 17.9. **Waiver:** No conduct of Immij (including a failure to exercise, a partial exercise or delay in exercising, a right, power or remedy) operates as a waiver of the right, power or remedy or otherwise prevents the exercise of the right, power or remedy. Immij may only waive a right, power or remedy in writing signed by an authorised officer of Immij.