



Credit account application

ACT Joinery & Building Pty Ltd · ABN 92 098 888 316

(08) 8345 0711 admin@actjoinery.com.au

40-42 Merchant Cres, Pooraka SA 5095

To be completed by applicants. Please complete all sections and read the Terms and Conditions of Trade attached.

Customer's details☐ Individual ☐ Sole Trader ☐ Trust ☐ Partnership ☐ Company ☐ Other

Full or legal name _____

Trading name (if different from above) _____

Physical address / postcode _____ Billing address / postcode _____

Email address _____ Phone / fax / mobile _____

Personal and business details

D.O.B. _____ Driver's licence no. _____

ABN / ACN _____ Date established (current owners) _____

Nature of business _____ Paid-up capital / estimated monthly purchases / credit

limit required
Principal place of business: ☐ Rented ☐ Owned ☐ Mortgaged (to whom)**Directors / owners / trustee (if more than two, attach a separate sheet)**

(1) Full name / D.O.B. _____ (2) Full name / D.O.B. _____

Private address / state / postcode _____ Private address / state / postcode _____

Driver's licence / phone / mobile _____ Driver's licence / phone / mobile _____

Account, banking and trade references**Account terms:** ☐ 7 Days ☐ COD ☐ Other **Purchase order required?** ☐ Yes ☐ No **Accounts emailed?**☐ Yes ☐ No

Accounts email address _____ Accounts contact / phone _____

Bank and branch / account no. _____ Credit limit required _____

Trade reference	Name / address	Email	Phone
1.			
2.			
3.			

I certify that the above information is true and correct and that I am authorised to make an application for credit, in accordance with the Privacy Act (1988) I authorise any person or company to give information as may be required in response to credit inquiries. I have read and understand the TERMS AND CONDITIONS OF TRADE (attached) of ACT Joinery & Building Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Company I shall be personally responsible for the performance of the Clients obligations under this agreement.

Execution

Signed (customer) _____ Signed (ACT) _____

Name _____ Name _____

Position _____ Position _____

Witness to customer's signature _____ Witness name / date _____

Office use only

Account / ref no.	Credit limit \$	Approved by	Data inputted	Date
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Terms and Conditions of Trade

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Current terms supplied by ACT Joinery & Building Pty Ltd.

1. Description

"Seller" is defined as "ACT Joinery & Building Pty Ltd" any successors, nominated assignees or any entity delegated to act on behalf of and with the authority of "Act Joinery & Building" to be referred to as "ACT" for the purposes of this agreement "Client" is defined as the entity purchasing the specified goods and/or services specified on any invoice, sales document or purchase order. Where more than a single Client is specified on transaction documents the term Client shall relate to Client s both jointly and severally. "Goods" defines the Goods and/or Services provided to the Client by ACT in fulfilment of the Client's request. In this context the terms 'Services' may also be substituted for 'Goods' when describing a sales transaction. "Fee" defines the monetary amount payable for specified Goods as contracted between ACT and the Client as stipulated within the Fee and Payment clauses following. "GST" means Goods and Services Tax (GST) as defined with the "A New Tax System (Goods and Services Tax) Act 1999"

2. Approval & Acceptance

Where a Client lodges a request for Goods and accepts the delivery of the stipulated Goods, the Client is deemed to be wholly and immediately obligated to fulfil the terms and conditions of the transaction. Such terms and conditions may be altered or amended upon ACT's written consent and will overrule any discrepancy between other written or verbal agreement/s between ACT and Client.

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3. Privacy Act 1988

3.1 The Client consents to ACT to request from a credit reporting body (CRB) a credit report including personal credit information (e.g. name, address, date of birth, occupation, previous credit applications) relating to the Client's credit history and for this report to be supplied to ACT. The Client permits ACT to share information about the Client with credit providers and any related body corporates for the purposes of:

- (a) Assessing any credit applications by the Client; and/or
- (b) Inform other credit providers of any default made by the Client and/or;
- (c) Exchange information amongst credit providers regarding the status of this credit account, when the Client has defaulted; and/or
- (d) To determine the Client's creditworthiness including the Client's repayment history over the previous two years.

3.2 The Client agrees to ACT being provided with a consumer credit report to collect overdue payment on commercial credit. The Client acknowledges their personal credit information may be provided to be used and retained by ACT for the purposes of:

- (a) The sale or supply of Goods; and/or
- (b) Evaluating, verifying and/or assessing the Client's payment and/or credit status in relation to the sale or provision of Goods; and/or
- (c) Handling of payment instructions, credit facilities and/or direct debit facilities applied for by the Client; and/or
- (d) Assisting the recovery of amounts outstanding in relation to the provision of Goods.

3.3 ACT retains the right to supply information about the Client to a CRB for the following purposes:

- (a) To request a consumer credit report;
- (b) Permit the CRB to generate or manage a credit information account on the Client including credit history. The information given to the CRB may include but not be restricted to:
 - (a) The Client acknowledges Personal information as described above; outlined in 3.1.
 - (b) The credit provider's name and information that ACT is a current credit supplier to the Client
 - (c) Whether the credit provider is a licensee;
 - (d) The nature and type of consumer credit applied for;
 - (e) Details relating to the Client's credit application or commercial credit (e.g. amount applied for, commencement date/termination of the credit account etc.
 - (f) Specifics relating to the Client's overdue accounts, consumer credit defaults, loan repayments or outstanding amounts overdue by greater than sixty (60) days or in cases where written notice for a payment request has occurred and any debt recovery actions have been initiated. Additionally in cases where the Client has ceased to have any overdue amounts owing, and where the Seller has received payment or been similarly discharged; relevant details concerning this discharge are recorded (e.g. dates of payments);
 - (g) Where it is the opinion of ACT that the Client has perpetrated a significant credit infringement, information about this shall be submitted;
 - (h) Advice where the Client's overdue payment amount is equal to or greater than one hundred and fifty dollars (\$150).

3.4 The Client retains the right to request from ACT by e-mail:

- (a) A copy of the Client's information retained by ACT and the right to require ACT amend any inaccurate information; and
- (b) ACT is prevented from disclosing any of the Client's personal information used for the purpose of direct marketing. ACT is required to destroy personal information when requested by email to do so by the Client. Additionally when information is no longer required by ACT except in cases where it is necessary to fulfil the obligations of this agreement or alternatively required to be maintained and/or stored in compliance with relevant legislation. The Client is entitled to lodge a privacy complaint by e-mailing ACT. ACT is obligated to respond to any complaints within seven (7) days of receipt and is required to undertake any reasonable measures and to make a determination regarding the complaint within thirty (30) days of receiving the complaint. In cases where the Client is dissatisfied with the outcome provided, the Client is entitled to submit a complaint with the Information Commissioner whose web address is www.oaic.gov.au.

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4. Fee and payment

It is ACT's prerogative to determine the Fee as being either:

- (a) As specified on any invoice issued by ACT to the Client; or
- (b) The prevailing Fee in accordance with ACT's current price list on the date of delivery of the Goods; or
- (c) ACT's specified price as indicated on a valid written quotation within a thirty (30) day period following issuance of that quote. Where a variation to the Seller's quotation is sought by the Client, the Seller reserves the right to alter the Fee upon the updated or new quotation. ACT retains the sole discretion to request a non-refundable deposit where determined appropriate. The Client will be required to make payment for the Goods upon the date/s stipulated by ACT, which ACT will determine to be either:
 - (a) Upon delivery of the Goods or fulfilment of the Services;
 - (b) Prior to the delivery of the Goods or fulfilment of the Services;
 - (c) By agreed instalment or progress payments in conformity with a payment schedule agreed by ACT; (d) Within thirty (30) days following the end of the calendar month as dated on the statement and posted to the Client's provided address;
 - (e) The date stipulated on any invoice, quotation or other sales document specifying the payment date; or
 - (f) In the absence of alternative or contradictory notification, the calendar date seven (7) days following the issuance of any invoice provided to the Client by ACT. (g) Any increase in the cost of goods will be shown as variations on the invoice, the Client must respond to any variations within 10 working days of receipt, failure to do so will entitle ACT to add the cost of the variation to the price. Payment of variations must be made in full at the time of their completion. Payment will be accepted in cash, bank cheque, cheque, on-line/electronic banking or credit card (subject to a surcharge based on 1.5% of the Price, or any other payment arrangement agreed upon by both ACT and the Client. Prices do not include GST unless specifically stipulated. Prices payable by the Client to ACT must in addition include an amount equal to the GST amount payable by ACT for the sales transaction. Without deduction or offsetting other amounts the Client is obligated to pay GST simultaneously at the same time as paying the Price. Additionally the Client shall be obligated to pay any additional duties or taxes which shall be liable in addition to the Price unless they are specifically combined with the Price.

5. Non-payment and consequences of non-payment

- (a) Overdue invoices shall be liable to interest which shall accrue daily from the payment's due date, until the actual payment date based on an interest rate of two and half percent (2.5%) per calendar month. ACT retains the right to compound interest on a monthly basis at the same rate.
- (b) Where ACT is owed money by the Client, the Client shall accept liability to pay ACT all of ACT's costs and expenses incurred to recover the debt which shall include but not be restricted to, internal administration charges, legal fees, ACT's contract default charge and any financial institution charges such as cheque dishonour fees.
- (c) Without forfeiting any alternative remedies open to ACT, if the Client at any time breaches any obligation, including with regard to payment, as specified within these terms and conditions ACT shall be entitled to suspend or cancel the supply of Goods and/or Services to the Client. ACT shall not be accountable for any losses or damages incurred by the Client as a result of ACT exercising their rights pursuant to this article of the agreement. Additionally without forfeiting other remedies provided at law ACT shall be entitled to cancel any or all parts of outstanding orders belonging to the Client that remain unfulfilled with any sums owed to ACT, irrespective of whether or not they are due for payment which shall become immediately due in cases where:
 - (a) ACT has any overdue amounts payable;
 - (b) It is ACT's belief that the Client shall be incapable of meeting their payment obligations on their due date;
 - (c) Due to insolvency, the Client summons a creditors meeting for the requested purpose of entering into arrangements with creditors, or initiates an assignment for their creditors benefit; or
 - (d) A liquidator (provisional or otherwise), receiver, manager or appointee with a comparable function be made in relation to the Client or any of the Client's assets.

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6. Delivery of Goods

Delivery ("Delivery") of the Goods are taken to transpire at the time that:

- (a) The Client or the Client's elected delivery service takes control of the Goods at ACT's address; or
- (b) ACT (or ACT's elected delivery service) transports the Goods to the Client's nominated address even if the Client is not present at the address. At the Seller's sole preference the cost of delivery is either incorporated in the Price or is in addition to the Price. The hard rock must take supply by receipt or collection of the Goods on every occasion they are presented for delivery. In the occasion that the Client is not capable to take delivery of the Goods as agreed then ACT shall be permitted to charge a practical fee for redelivery and/or storage. ACT may deliver the Goods in dispersed quantities. Each dispersed quantity will be invoiced and paid in agreement with the obligations in these terms and conditions. Any time or date stipulated by ACT to the Client is an approximation only. The Client must still accept delivery of the Goods even if delayed and ACT will not be accountable for any loss or damage experienced by the Client as a result of the delivery being delayed.

7. Risk

- (a) Risk of damage to or loss of the Goods transfers to the Client on delivery and the Client must insure the Goods on or prior to Delivery.
- (b) If any of the Goods are flawed or damaged succeeding delivery but preceding ownership transferring to the Client, ACT is eligible to have a collection of all insurance proceeds owed for the Goods. The making of these terms and conditions by ACT is appropriate confirmation of ACT's rights to collect the insurance proceeds with no need for any individual dealing with ACT to make additional enquiries.
- (c) If the Client requests ACT to leave Goods outside ACT's locations for gathering or to deliver the Goods to an unattended locality then such Goods shall be left at the Client's sole risk

8. Defects

- (a) The Client shall review the Goods on delivery and shall within 28 days of supply (time being of the essence) and must advise ACT of any suspected defect, deficiency in quantity, damage or failure to comply with the description or quote.
- (b) The Client shall grant ACT the opportunity to review the Goods within a practical time succeeding delivery if the Client considers the Goods are flawed in any way. If the Client shall fail to observe these provisions the Goods shall be accepted to be free from any flaw or damage.
- (c) For substandard Goods, which ACT has approved in writing that the Client is entitled to discard, ACT's liability is limited to either (at ACT's option) exchanging the Goods or repairing the Goods

9. Timber

- (a) Timber is a natural product and as such may display variations in texture, shade, and colour, surface, finish, markings, veining, and contain natural cracks and fissures constrictions, and depressions. Whilst ACT will make every effort to match sales samples to the finished Goods ACT accepts no liability whatsoever where such samples differ to the finished Goods supplied.
- (b) Timber is a hygroscopic material subject to expansion and contraction, therefore ACT will accept no responsibility for gaps that may appear in the timber during extended dry periods.
- (c) The Client acknowledges that Goods supplied may:
 - (i) Fade or change colour over time; and
 - (ii) Expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (iii) Mark or stain if exposed to certain substances; and
 - (iv) Be damaged or disfigured by impact or scratching.
- (v) It is agreed ACT provide its best products, however refer to clause Defects (8a) and the Warranty provided separate to this agreement. To avoid the above, it is up to the Client to keep the timber treated as advised by ACT, subject to the Warranty.

10. Termination of Services

Without prejudice to any other remedies the Seller may withdraw any agreement to which these terms and conditions pertain or withdraw supply of Goods at any time before the Goods are supplied by providing written notification to the Client. On presenting such notification ACT shall reimburse to the Client any money paid by the Client for the Goods. ACT shall not be accountable for any loss or damage whatsoever arising from such termination. In the occasion that the Client ceases supply of Goods the Client shall be accountable for any and all loss sustained (whether direct or indirect) by the Seller as a direct consequence of the termination (including, but not restricted to, any loss of profits). Termination of orders for goods made to the Client's specifications, or for non-in stock items, will definitely not be accepted once production has commenced, or an order has been placed.

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11. Guarantee/Warranty

ACT warrants that if any flaw in any Goods or services of ACT becomes apparent and is conveyed to ACT inside 24 months of the date of delivery (time being of the essence) then ACT will either (at ACT's sole discretion) replace or remedy the goods/and or services. See also the Warranty supplied by ACT, separate to this agreement. The conditions applicable to warranty

- (a) The warranty shall not cover any flaw or damage which may be affected or partly affected by or arise through:
 - (i) Failure on the part of the Client to correctly conserve Goods; or
 - (ii) Failure on the part of the Client to follow any directions or procedures provided by ACT form; or
 - (iv) The continuous use of Goods after any flaw becomes obvious or would have become obvious to a reasonably sensible operator or user; or
 - (v) Fair wear and tear, any misfortune or act of God.
- (vi) The warranty shall conclude and ACT shall thereafter in no circumstances be liable under the terms of the warranty if the goods/and or services are mended, changed or overhauled without ACT's consent.
- (vii) In respect of all claims ACT shall not be liable to reimburse the Buyer for any interruption in either replacing or resolving the flawed goods/and or services or in properly evaluating the Client claim. For Goods not manufactured by ACT, the warranty shall be the existing Warranty provided by the manufacturer of the Goods. ACT shall not be bound by nor be accountable for any term, condition, representation or warranty other than that which is agreed by the manufacturer of the Goods.

12. Title & Ownership of Goods

Both ACT and Client concur that proprietorship of the Goods will only pass when:

- (a) The Client has disbursed all amounts due to ACT; and
- (b) The Client has met all of its other commitments to ACT. Receipt of any form of imbursement other than cash by ACT shall not be regarded to be imbursement until that form of payment has been fulfilled, cleared or recognized. It is further agreed that:
 - (a) Until proprietorship of the Goods passes to the Client that the Client is only a Bailee of the Goods and must give back the Goods upon ACT's request.
 - (b) The Client must maintain adequate insurance of the Goods on consign for ACT and must pay to ACT the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) The Client must not vend, dispose, or otherwise part with custody of the Goods other than in the usual course of business and for market rate. If the Buyer sells, disposes or parts with custody of the Goods then the Client must hold the earnings of any such act on trust for ACT and must pay or deliver the proceeds to ACT on demand.
 - (d) The Client should not convert or process the Goods or intermix them with other goods nonetheless if the Client does so then the Client retains the resultant product on trust for the benefit of ACT and must sell, dispose of or return the resulting product to ACT as it so directs.
- (e) The Client authorizes ACT to enter any locations where ACT believes the Goods are kept and recover custody of the Goods.
- (f) ACT may recover possession of any Goods in shipment whether or not delivery has occurred.
- (g) ACT may commence proceedings to recover the price of the goods sold, although the ownership of goods has not passed on to the Client.
- (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 ACT.
- (h) ACT may initiate proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

13. Withholding Payments & Deductions

No allowance has been made in the Price for the deduction or retentions. In the event that retentions are made, ACT reserves the right to treat all retentions as placing the Client's account into default.

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14. Payment Schedules and Variations

- (a) ACT may present a thorough payment claim at interims not less than monthly for work completed up to the end of each month. The cost of work so completed shall include the practical cost of authorised variations and the price of materials supplied to the site but not installed.
- (b) Any disparity from the plan of planned works or stipulations (including, but not limited to, any variation as a result of supplementary works essential due to concealed or unidentifiable complications beyond the practical control of ACT, such as obstacles underneath the surface or iron supporting rods, will be detailed in writing and charged for on the basis of ACT's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion

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

The definitions for financing statement, financing change statement, security agreement, and security interest are those given in the PPSA. When agreeing to these terms and conditions in writing the Client is acknowledging and agreeing that these terms and conditions represent a security agreement consistent with the PPSA and that a security interest in all Goods has been created covering all Goods previously supplied and any to be supplied by the Seller to the Client in the future. The Client pledges to:

- (a) Swiftly sign any outstanding documents which ACT may reasonably require and/or supply any additional information with a requirement for information to be complete, accurate and upto-date in all respects;
- (i) Lodge a financing statement or financing change statement relating to a security interest on the Personal Property Securities Register;
- (ii) Lodge any obligatory document/s required to be registered by the PPSA; or
- (iii) Correct any inaccuracies or defects contained in any statement.
- (b) ACT shall be indemnified, and when demanded, reimbursed all expenses incurred in the process of registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or discharging any Goods no longer requiring to be covered by the PPSA's provisions;
- (c) Comply with registering a financing change statement in relation to any security interest only with ACT's prior written approval;
- (d) Not register, or allow to be registered, a financing statement or a financing change statement in relation to Goods under the claim of a third party without ACT's prior written approval;
- (e) ACT is to be informed immediately when any material change in the business practices of selling Goods takes place which would affect the nature of proceeds resulting from the relevant sales. The Client and ACT acknowledge that sections 96, 115 and 125 of the PPSA are not applicable to the security agreement resulting as a consequence of acceptance of these terms and conditions. The Client agrees to waive their rights to receive notices under sections 95, 118, 121(4), 130, 132(3 (d) and 132(4) of the PPSA. The Client agrees to waive their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA. Except when ACT provides written agreement to the contrary the Client waives their right to receive a verification statement as mandated in section 157 of the PPSA. ACT's actions must be ratified by the Client unconditionally within the context of this clause subject to any express provisions to the contrary. No part of these terms and conditions are intended to have the effect of opting out of any of the obligatory provisions of the PPSA.

16. Variations in Clients Details

The Client shall provide ACT not less than fourteen (14) days former written notice of any planned change of proprietorship of the Client and/or any other alteration in the Client's details (including but not restricted to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be accountable for any loss suffered by ACT as a result of the Client's failure to observe with this clause.

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17. Dispute Resolution

If a dispute occurs amid the parties to this agreement then both party shall refer to the other party a notice of disagreement in writing adequately identifying and stipulating details of the disagreement. Within fourteen (14) days after service of a notice of disagreement, the parties shall deliberate at least once, to endeavour to settle the disagreement. At any such session each party shall be represented by an individual having authorisation to agree to a resolve the dispute. In the occasion that the disagreement cannot be so settled either party may by supplementary notification in writing supplied by hand or directed by certified mail to the other party transfer such disagreement to arbitration. Any arbitration shall be:

- (a) Referred to a sole arbitrator to be designated by the President of the Institute of Arbitrators Australia; and
- (b) Conducted in accord with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration
- (c) In the event of a dispute the arbitration shall take place in Adelaide CBD or where ACT chooses.

18. Compliance with Australian Law

ACT and the Client shall comply with the provisions of all statutes, regulations and by- laws of Government, Local Government, Councils and other authorities that may be applicable to the works. The Client shall obtain (at the Client s expense) all the applicable approvals and licenses which may be required for the works. Furthermore the Client agrees that the site will comply with any Work Health and Safety

(WHS) laws that relate to the building and construction industry and any other related and relevant safety standards of legislation which may apply

19. Intellectual Property

ACT retains all intellectual property rights in goods and in any documentation supplied with or as part of or in relation to the supply of goods, including any designs or other documentation which may have been prepared prior or proposed supply of goods to the Client.

20. Security and Charge

- (a) In consideration of ACT 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).
- (b) The Client indemnifies ACT from and against all costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising ACT's rights under this clause.
- (c) The Client irrevocably appoints ACT and each director as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 20 including, but not limited to, signing any document on the Client's behalf

21. Goods.

A description of all goods shall be provided to the client on invoices and quotations

22. Miscellaneous

- (a) ACT's failure to comply with any provision of these terms and conditions shall not be regarded as a waiver of that provision, neither shall it affect ACT's entitlement to subsequently enforce that provision.
- (b) In the case of any particular clause/s of these terms and conditions being invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of all remaining clauses shall not be affected, prejudiced or impaired.
- (c) The terms and conditions represented in this agreement and any contract over which they apply shall be subject to the laws of the state in which ACT has their principal place of business, and are subject to the jurisdiction of the courts in that state.
- (d) ACT remains under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense resulting in loss of profit experienced by the Client resulting from an oversight by ACT of these terms and conditions.
- (e) Alternatively ACT liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- (f) The Client is not entitled to set off against, or deduct from the Price, any amounts owed or claimed to be owed by ACT from the Client nor may they withhold payment of any invoice because part of that invoice is disputed.
- (g) ACT is entitled to license or sub-contract all or any part of their rights and obligations without the Client's consent.
- (h) The Client acknowledges the Seller's right to amend these terms and conditions at any time. However if the Seller implements a change to these terms and conditions, then any change will take effect from the date on which ACT informs the Client of such changes. It is assumed the Client will be taken to have accepted such changes if the Client submits further requests for ACT to supply Goods to the Client.
- (i) Neither party will be liable for any default in the event of any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either the Client or ACT.
- (j) The Client acknowledges that they have the power to enter into this agreement and have secured all necessary authorisations to permit this agreement to proceed. The Client is not insolvent and by consenting to this agreement a binding and valid legal obligation has commenced.