

1. Definitions

- 1.1 “Ocean Controls” means Pembroke Holdings Pty Ltd T/A Ocean Controls, its successors and assigns, or any person acting on behalf of, and with the authority of, Pembroke Holdings Pty Ltd T/A Ocean Controls.
- 1.2 “Customer” means the person/s ordering the Goods, as specified in any quotation, order, invoice or other document, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by Ocean Controls to the Customer, at the Customer’s request, from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Goods, as agreed between Ocean Controls and the Customer in accordance with clause 4 below. The Price may be specified and/or displayed:
- (a) as including, or excluding GST (i.e. any catalogued Price does not include GST, and Goods exported by Ocean Controls are exempt from GST). GST of ten percent (10%) is applied to Goods delivered in Australia; and
 - (b) in a number of foreign currencies, which are approximate only; and
 - (c) by default, the Price will be charged in Australian Dollars (\$AUD), excluding GST, and the final exchange rate for international transactions is set by Ocean Controls’ bank.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for Goods, or accepts Delivery.
- 2.2 These terms and conditions may only be amended with Ocean Controls’ consent in writing and shall prevail to the extent of any inconsistency with any order, other document or agreement between the Customer and Ocean Controls.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.4 Australian government organisations and Australian universities are automatically granted a credit account with Ocean Controls; Ocean Controls will accept orders from these organisations by fax or email, provided the order shows the organisation’s letterhead.

3. Change in Control

- 3.1 The Customer shall give Ocean Controls not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Ocean Controls as a result of the Customer’s failure to comply with this clause.

4. Price and Payment

- 4.1 At Ocean Controls’ sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Ocean Controls to the Customer in respect of Goods supplied; or
 - (b) the Price as at the date of Delivery, according to Ocean Controls’ website and catalogue. Whilst Ocean Controls will try to maintain prices specified on its website and catalogue, Ocean Controls reserves the right to change the Price of any Goods without notice; or
 - (c) Ocean Controls’ quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of twenty-one (21) days.
- 4.2 Ocean Controls reserves the right to change the Price:
- (a) if a variation to the Customer’s order is requested (including, but not limited to, Goods which are to be supplied, date for Delivery, or the nominated carrier, destination and/or insurance, etc.); or
 - (b) to reflect any increases to Ocean Controls in the cost of supplying the Goods which are beyond the reasonable control of Ocean Controls (including, without limitation, increases in the cost of labour or materials, foreign exchange fluctuations, or increases in taxes or customs duties or insurance premiums).
- 4.3 At Ocean Controls’ sole discretion, a deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Ocean Controls, which may be:
- (a) prior to Delivery – where the Customer does not have a credit account with Ocean Controls; or
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, and where the Customer has a credit account with Ocean Controls, the date which is thirty (30) days following the end of the month of the date of any invoice furnished to the Customer by Ocean Controls.
- 4.5 Payment may be made by cash, cheque or bank cheque (made out to Ocean Controls and crossed), electronic/on-line banking (plus a surcharge of twenty-five dollars (\$25.00) for any international bank transfer), credit card (by authorisation of Ocean Controls, and plus a surcharge of up to two percent (2%) of the transaction), or by any other method as agreed to between the Customer and Ocean Controls.
- 4.6 Where the Customer has a credit account with Ocean Controls, discounts for bulk purchases may be applied to the Customer’s orders, and:
- (a) such discounts are subject to the Customer’s payment of the account within the thirty (30) days credit terms; and
 - (b) Price breaks and discount levels vary between Goods, but are typically ten percent (10%) for order quantities of five (5) or more, and fifteen percent (15%) for order quantities of ten (10) or more.
- 4.7 Where the Customer is an OEM (Original Equipment Manufacturer), or wishes to be a reseller, a wholesale Price may be applicable. To qualify for wholesale rates, average trading amounts per month, and minimum values per order (excluding freight and GST), are required. Once approved, the Customer is issued with a username and password for Ocean Controls’ website that will allow the purchase of Goods at wholesale rates. Orders are also accepted by phone, fax or email.

5. Goods Availability and Specifications

- 5.1 The Customer acknowledges that Ocean Controls:
- (a) is constantly reviewing its products range, and it reserves the right to discontinue, or change the design of, any Goods, at any time; and
 - (b) endeavours to keep stock levels shown on its website as accurate as possible; however, Ocean Controls also accepts in-person, phone and fax orders. Most Goods are kept in stock, but some are ordered in a ‘just-in-time’ process from a local supplier.
- 5.2 In consideration of clause 5.1, the Customer agrees that the supply of Goods for accepted orders are subject to availability, and Ocean Controls will not be liable in any circumstances for the failure to supply any Goods ordered by the Customer.
- 5.3 Specifications and particulars in relation to the Goods referred to on Ocean Controls’ website, or in its catalogue, are subject to change without notice. Some photographs contain sample units, and shipment product may vary in colour and look. Ocean Controls will not be held liable for any errors or omissions.

6. Orders

- 6.1 Ocean Controls reserves the right to decline to trade with any company or person. To avoid duplication, the Customer must clearly mark written confirmation of telephone orders as “confirmation only”. Ocean Controls will not accept liability for orders not so marked, and duplicate orders will be charged to the Customer accordingly.
- 6.2 The Customer acknowledges that:
- (a) orders can only be modified, suspended and/or cancelled upon prior negotiation and agreement with Ocean Controls (in writing), and the Customer must indemnify Ocean Controls in respect of any expenses incurred by Ocean Controls relating to the modification or cancellation of any order, including but not limited to, any and all loss incurred (whether direct or indirect) by Ocean Controls as a direct result of such modification or cancellation (including, but not limited to, any loss of profits). A restocking fee as per clause 12.10 may apply at Ocean Controls’ sole discretion; and
 - (b) Goods not shown on Ocean Controls’ website and catalogue are not stocked by Ocean Controls and may have minimum order quantities or minimum line values applied to the order. Such Goods are intent items and require an irrevocable order; and
 - (c) Goods not in stock at the time of receipt of the order by Ocean Controls will automatically be placed on backorder, unless otherwise requested by the Customer. If multiple quantities or varieties of Goods are ordered, and some of them are expected to arrive to Ocean Controls within a few days, at Ocean Controls’ sole discretion, the order will be held while the other Goods are awaited. If longer lead times are expected, the order may be split into multiple shipments. Ocean Controls reserves the right (at its sole discretion) to charge the Customer further freight charges for additional shipments.
- 6.3 The Customer is responsible (at its own expense) for obtaining any licence and complying with any export regulations in force within Australia and the county for which the Goods are destined. All taxes and clearance charges imposed by customs or government officials of that country will be paid by the Customer.

7. Delivery

- 7.1 Where Ocean Controls is unable to supply a completed order from stock, or at the written request of the Customer, Ocean Controls may deliver the Goods in separate shipments. This does not confer upon the Customer the right to withhold payment of any invoice (or part thereof), and such invoice shall be paid in accordance with the provisions in these terms and conditions, and Ocean Controls reserves the right (at its sole discretion) to charge the Customer further freight charges for multiple shipments.
- 7.2 Delivery of the Goods (“Delivery”) is taken to occur at the time that:
- (a) the Customer (or the Customer’s nominated carrier) takes possession of the Goods at Ocean Controls’ address. Ocean Controls reserve the right to countermand the Customer’s choice of carrier if such carrier’s shipping methods do not meet the requirements of Ocean Controls (e.g. where the Goods to be shipped do not meet the carrier’s requirements, or where shipping methods are not tracked, etc.); or
 - (b) Ocean Controls (or Ocean Controls’ nominated carrier) delivers the Goods to the Customer’s nominated destination, even if the Customer is not present thereat.
- 7.3 Notwithstanding anything contained in the Customer’s order, and unless agreed otherwise by Ocean Controls in writing, Ocean Controls reserves the right to charge the costs of Delivery to the Customer.
- 7.4 Unless specifically requested by the Customer in writing, Ocean Controls will use its preferred carrier and shipping method. All costs of Delivery for specific carriers nominated by the Customer cannot be prepaid; they must be “freight collect”; which means the Customer must pay the costs of Delivery to the carrier directly, and such costs will not be included in the invoice. In this instance, insurance responsibility for the Goods passes to the Customer once the Goods have been passed into the possession of the carrier.
- 7.5 The costs of Delivery will be calculated on the weight, volume and nominated destination of the Goods. If the Customer is ordering through Ocean Controls’ website and is unable select the country of the nominated destination, it is likely because special insurance, freight or tracking requirements prevent the calculation of the costs of Delivery. The Customer must contact Ocean Controls directly to find out about shipping options to the Customer’s nominated destination.
- 7.6 The Customer must take Delivery, by receipt or collection of the Goods, whenever they are tendered for Delivery. In the event that the Customer is unable to take Delivery, as arranged, then Ocean Controls shall be entitled to charge a reasonable fee for re-Delivery and/or storage of the Goods.
- 7.7 Whilst Ocean Controls will use reasonable endeavours to meet any estimated time and/or date for Delivery, under no circumstances shall Ocean Controls be liable to compensate the Customer for any loss or damage incurred by the Customer as a result of non-Delivery or late Delivery, and the Customer must still accept Delivery, even if late.
- 7.8 Ocean Controls may cancel any contract to which these terms and conditions apply, or cancel Delivery at any time before the Goods are delivered, by giving written notice to the Customer. On giving such notice Ocean Controls shall repay to the Customer any money paid by the Customer for the Goods. Ocean Controls shall not be liable for any loss or damage whatsoever arising from such cancellation.

8. Risk

- 8.1 All Goods are delivered “ex works”, which means Ocean Controls’ responsibility for the Goods ends when the Goods leave the possession of Ocean Controls, and (subject to any insured packages) risk of damage to, or loss of, the Goods passes to the Customer. If the Customer requires insurance against the loss of, or damage to, the Goods, it must either contact Ocean Controls to arrange such insurance (at an additional cost) or arrange such insurance itself (or at its own cost).
- 8.2 If any of the Goods are damaged or destroyed following Delivery:
- (a) the Customer must contact the carrier, and may be entitled to claim against such carrier if negligence can be proven on the carrier’s behalf; and
 - (b) but prior to ownership passing to the Customer, Ocean Controls is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Ocean Controls is sufficient evidence of Ocean Controls’ rights to receive the insurance proceeds without the need for any person dealing with Ocean Controls to make further enquiries.

9. Title

- 9.1 Ocean Controls and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Ocean Controls all amounts owing to Ocean Controls; and
 - (b) the Customer has met all of its other obligations to Ocean Controls.
- 9.2 Receipt by Ocean Controls of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then Ocean Controls’ rights and ownership in relation to the Goods, and this contract, shall continue.
- 9.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 9.1:
- (a) the Customer is only a bailee of the Goods, and must return the Goods to Ocean Controls on request; and
 - (b) the Customer holds the benefit of the Customer’s insurance of the Goods on trust for Ocean Controls and must pay to Ocean Controls the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed; and

- (c) the Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Ocean Controls and must pay or deliver the proceeds to Ocean Controls on demand; and
- (d) the Customer should not convert or process the Goods, or intermix them with other goods, but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Ocean Controls and must sell, dispose of or return the resulting product to Ocean Controls as it so directs; and
- (e) the Customer irrevocably authorises Ocean Controls to enter any premises where Ocean Controls believes the Goods are kept and recover possession of the Goods; and
- (f) Ocean Controls may recover possession of any Goods in transit, whether or not Delivery has occurred; and
- (g) the Customer 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 Ocean Controls; and
- (h) Ocean Controls may commence proceedings to recover the Price, notwithstanding that ownership of the Goods has not passed to the Customer.

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 Customer 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 any monetary obligation of the Customer to Ocean Controls for Services, that have previously been supplied (if any), and that will be supplied in the future, by Ocean Controls to the Customer.
- 10.3 The Customer 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 Ocean Controls 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; or
 - (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, Ocean Controls 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; and
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Ocean Controls; and
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Ocean Controls; and
 - (e) immediately advise Ocean Controls 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 Ocean Controls and the Customer 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 Customer 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 Customer 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 Ocean Controls, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Customer must unconditionally ratify any actions taken by Ocean Controls under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary 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 Ocean Controls agreeing to supply the Goods, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Customer indemnifies Ocean Controls from and against all Ocean Controls’ costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Ocean Controls’ rights under this clause.
- 11.3 The Customer irrevocably appoints Ocean Controls and each director of Ocean Controls as the Customer’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 Customer’s behalf.

12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 12.1 The Customer must inspect the Goods on Delivery and must, within seven (7) days of such time, notify Ocean Controls in writing of any evident defect/damage, error or omission (including Ocean Controls’ workmanship), shortage in quantity, or failure to comply with the description or quotation. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Ocean Controls to inspect the Goods.
- 12.2 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”).
- 12.3 Ocean Controls acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Ocean Controls makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Ocean Controls’ liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Customer is a consumer within the meaning of the CCA, Ocean Controls’ liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If Ocean Controls is required to replace the Goods under this clause or the CCA, but is unable to do so, Ocean Controls may refund any money the Customer has paid for the Goods.
- 12.7 If the Customer is not a consumer within the meaning of the CCA, Ocean Controls’ liability for any defect or damage in the Goods is:
 - (a) limited to the value of any express warranty, or warranty card, provided to the Customer by Ocean Controls (at Ocean Controls’ sole discretion); or
 - (b) limited to any warranty to which Ocean Controls is entitled, if Ocean Controls did not manufacture the Goods; or

- (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 12.1; and
 - (b) the Customer has filled out, and supplied to Ocean Controls, a “Warranty Claim Form” detailing the Goods (including the alleged defect, the original invoice number and date of purchase); and
 - (c) Ocean Controls has agreed that the Goods are defective and has issued the Customer with a Warranty Claim Form; and
 - (d) the Goods are returned within a reasonable time at the Customer’s cost (if that cost is not significant); and
 - (e) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, Ocean Controls 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 Customer failing to properly maintain or store the Goods; or
 - (b) the Customer using the Goods for any purpose other than that for which they were designed; or
 - (c) the Customer continuing the use of the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user; or
 - (d) the Customer failing to follow any instructions or guidelines provided by Ocean Controls; or
 - (e) fair wear and tear, any accident, or act of God.
- 12.10 Ocean Controls may (in its absolute discretion) accept non-defective Goods for return, in which case Ocean Controls may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Goods, plus any freight costs. All returned Goods must be in as new condition, including all packaging and documentation / manuals, etc. Non-standard, custom-made or specially manufactured or imported Goods are not accepted for return.
- 12.11 Notwithstanding anything contained in this clause:
- (a) certain Goods (including software, books and batteries) are excluded from the right of return, and may not be returned under any circumstances; and
 - (b) Goods classified as static sensitive devices will only be accepted for return in exceptional circumstances, and only where the Customer can prove to Ocean Controls that the Goods have been handled correctly; and
 - (c) if Ocean Controls is required by a law to accept a return then Ocean Controls will only accept a return on the conditions imposed by that law.
- 13. Intellectual Property**
- 13.1 The Customer warrants that all designs, specifications or instructions given to Ocean Controls will not cause Ocean Controls to infringe any patent, registered design or trademark in the execution of the Customer’s order and:
- (a) any claim from the sale which may allege infringement of trademarks, trade names, patents, copy or property rights of other parties shall be directed immediately by the Customer to Ocean Controls, and the Customer will give every assistance to Ocean Controls in connection with such claim. The Customer will not itself deal with, or compromise, any claim which may occur; and
 - (b) the Customer agrees to indemnify Ocean Controls against any action taken by a third party against Ocean Controls in respect of any such infringement.
- 13.2 The Customer agrees that Ocean Controls may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Ocean Controls has created for the Customer.
- 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 Ocean Controls’ sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Customer owes Ocean Controls any money, the Customer shall indemnify Ocean Controls from and against all costs and disbursements incurred by Ocean Controls in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Ocean Controls’ contract default fee, and bank dishonour fees).
- 14.3 Further to any other rights or remedies Ocean Controls may have under this contract, if the Customer has made payment to Ocean Controls by credit card, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Ocean Controls under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer’s obligations under this contract.
- 14.4 Without prejudice to any other remedies Ocean Controls may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Ocean Controls may suspend or terminate the supply of Goods to the Customer. Ocean Controls will not be liable to the Customer for any loss or damage the Customer suffers because Ocean Controls has exercised its rights under this clause.
- 14.5 Without prejudice to Ocean Controls’ other remedies at law, Ocean Controls shall be entitled to cancel all, or any part, of any order of the Customer which remains unfulfilled, and all amounts owing to Ocean Controls shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Ocean Controls becomes overdue, or (in Ocean Controls’ opinion) the Customer will be unable to make a payment when it falls due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 15. Privacy Act 1988**
- 15.1 The Customer agrees for Ocean Controls to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by Ocean Controls.
- 15.2 The Customer agrees that Ocean Controls may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer’s repayment history in the preceding two (2) years.

Ocean Controls – Terms and Conditions of Trade

- 15.3 The Customer consents to Ocean Controls being given a consumer credit report to collect overdue payment on commercial credit.
- 15.4 The Customer agrees that personal credit information provided may be used and retained by Ocean Controls for the following purposes (and for other agreed purposes or required by):
- the supply of Goods; and/or
 - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the supply of Goods; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - enabling the collection of amounts outstanding in relation to the Goods; and
 - direct marketing or promotional purposes.
- 15.5 Ocean Controls may give information about the Customer to a CRB for the following purposes:
- to obtain a consumer credit report; and/or
 - allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 15.6 The information given to the CRB may include:
- personal information as outlined in 15.1 above; and
 - name of the credit provider and that Ocean Controls is a current credit provider to the Customer; and
 - whether the credit provider is a licensee; and
 - type of consumer credit; and
 - details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested); and
 - advice of consumer credit defaults, 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 Customer no longer has any overdue accounts and Ocean Controls has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments); and
 - information that, in the opinion of Ocean Controls, the Customer has committed a serious credit infringement; and
 - advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 15.7 The Customer shall have the right to request (by email) from Ocean Controls:
- a copy of the information about the Customer retained by Ocean Controls and the right to request that Ocean Controls correct any incorrect information; and
 - that Ocean Controls does not disclose any personal information about the Customer for the purpose of direct marketing.
- 15.8 Ocean Controls will destroy personal information upon the Customer's request (by email) 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.
- 15.9 The Customer can make a privacy complaint by contacting Ocean Controls via email. Ocean Controls 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 Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 16. Unpaid Seller's Rights**
- 16.1 Where the Customer has left any item/s with Ocean Controls for repair, modification, exchange, or for Ocean Controls to perform any other service in relation to the item/s, and Ocean Controls has not received or been tendered the whole of any moneys owing to it by the Customer, Ocean Controls shall have, until all moneys owing to Ocean Controls are paid:
- a lien on the item/s; and
 - the right to retain or sell the item/s, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 16.2 The lien of Ocean Controls shall continue despite the commencement of proceedings, or judgment for any moneys owing to Ocean Controls having been obtained against the Customer.
- 17. General**
- 17.1 The failure by Ocean Controls to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Ocean Controls' 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.
- 17.2 These terms and conditions, and any contract to which they apply, shall be governed by the laws of Victoria, the State in which Ocean Controls has its principal place of business, and are subject to the jurisdiction of the courts in that State.
- 17.3 Subject to clause 12, Ocean Controls shall be under no liability whatsoever to the Customer for any indirect and/or consequential damages, loss and/or expense (including loss of profit), or claims for consequential compensation, whatsoever which arises out of, or in connection with contract, including arising out of a breach by Ocean Controls of these terms and conditions. To the extent permitted by law, the Customer releases Ocean Controls (and associated entities) from and against all liability whatsoever for any injury, loss or damage sustained by the Customer, howsoever arising. Alternatively, Ocean Controls' liability shall be limited to damages which under no circumstances shall exceed the Price.
- 17.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Ocean Controls nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.5 Ocean Controls may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 17.6 The Customer agrees that Ocean Controls may amend these terms and conditions at any time. If Ocean Controls makes a change to these terms and conditions, then that change will take effect from the date on which Ocean Controls notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Ocean Controls to supply Goods to the Customer.
- 17.7 Neither party shall be liable for any default due to any act of God, government actions, war, terrorism, import or export regulations and embargoes, labour disputes, strike, lock-out, industrial action, fire, explosion, flood, storm, the inability to obtain or a delay in obtaining supplies of the Goods, or other event beyond the reasonable control of either party. Ocean Controls may, as its option, delay the performance of, or cancel the whole (or any part) of, the contract.
- 17.8 The Customer warrants that it has the power to enter into this contract, and has obtained all necessary authorisations to allow it to do so, it is not insolvent, and that this contract creates binding and valid legal obligations on it.