
Pentel (Australia) Pty Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 “Agreement” means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Agreement.
- 1.2 “Pentel” means Pentel (Australia) Pty Limited, its successors and assigns or any person acting on behalf of and with the authority of Pentel (Australia) Pty Limited.
- 1.3 “Customer” means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Pentel to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.4 “Products” means all Products or Services supplied by Pentel to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Products’ or ‘Services’ shall be interchangeable for the other).
- 1.5 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Agreement, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 “Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Products via the website.**
- 1.7 “Price” means the Price payable (plus any GST where applicable) for the Products as agreed between Pentel and the Customer in accordance with clause 5 below.
- 1.8 “GST” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. Acceptance

- 2.1 The 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 or accepts Delivery of the Products.
- 2.2 In the event of any inconsistency between the terms and conditions of this Agreement and any other prior document or schedule that the parties have entered into, the terms of this Agreement shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Agreement may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges:
- (a) that the supply of Products on credit shall not take effect until the Customer has completed a credit application with Pentel and it has been approved with a credit limit established for the account; and
 - (b) in the event that the supply of Products request exceeds the Customer’s credit limit and/or the account exceeds the payment terms, Pentel reserves the right to refuse Delivery; and
 - (c) accepts that the supply of Products for accepted orders may be subject to availability and if, for any reason, Products are not or cease to be available, Pentel reserves the right to vary the Price with alternative Products as per clause 5.2, subject to prior confirmation and agreement of both parties; and
 - (d) Pentel also reserves the right to halt all Services until such time as Pentel and the Customer agree to such changes. Pentel shall not be liable to the Customer for any loss or damage the Customer suffers due to Pentel exercising its rights under this clause.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.6 The terms of this Agreement are meant to be read in conjunction with Pentel’s Consignment Stock Agreement and in the event that there are any inconsistencies between the two documents then the terms herein shall prevail.

3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that Pentel shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Pentel in the formation and/or administration of this Agreement; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Pentel in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Pentel; the Customer shall not be entitled to treat this Agreement as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Customer shall give Pentel 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, change of trustees, or business practice). The Customer shall be liable for any loss incurred by Pentel as a result of the Customer’s failure to comply with this clause.

5. Price and Payment

- 5.1 At Pentel’s sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by Pentel to the Customer; or
 - (b) the Price as at the date of Delivery of the Products according to Pentel’s current price list; or

Pentel (Australia) Pty Limited – Terms & Conditions of Trade

- (c) Pentel's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of seven (7) days.
- 5.2 Pentel reserves the right to change the Price:
- (a) if a variation to the Products which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) if during the course of the Services, the Products are not or cease to be available from Pentel's third party suppliers, then Pentel reserves the right to provide alternative Products; or
 - (d) in the event of increases to Pentel in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international ocean or air freight costs and insurance charges) which are beyond Pentel's control.
- 5.3 Variations will be charged for on the basis of Pentel's quotation, and will be detailed in writing, and shown as variations on Pentel's invoice. The Customer shall be required to respond to any variation submitted by Pentel within ten (10) working days. Failure to do so will entitle Pentel to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At Pentel's sole discretion, a non-refundable deposit may be required.
- 5.5 Time for payment for the Products being of the essence, the Price will be payable by the Customer on the date/s determined by Pentel, which may be:
- (a) on Delivery of the Products for any non-approved credit account holders;
 - (b) before Delivery of the Products;
 - (c) by way of instalments/progress payments in accordance with Pentel's payment schedule;
 - (d) thirty (30) days following the end of the month in which a statement is delivered to the Customer's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Pentel.
- 5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (Visa and MasterCard only, no surcharge will apply), or by any other method as agreed to between the Customer and Pentel.
- 5.7 Receipt by Pentel 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.
- 5.8 Pentel may in its discretion allocate any payment received from the Customer towards any invoice that Pentel determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Pentel may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Pentel, payment will be deemed to be allocated in such manner as preserves the maximum value of Pentel's Purchase Money Security Interest (as defined in the PPSA) in the Products.
- 5.9 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 Pentel nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Pentel an amount equal to any GST Pentel must pay for any supply by Pentel under this or any other agreement for the sale of the Products. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery of Products

- 6.1 Delivery ("Delivery") of the Products is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Products at Pentel's address; or
 - (b) Pentel (or Pentel's nominated carrier) delivers the Products to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 At Pentel's sole discretion:
- (a) the cost of Delivery is included in the Price; and
 - (b) for all orders over the published minimum order value, national Delivery into store will be free of charge, orders made below this threshold will be subject to Delivery charges.
- 6.3 Pentel may deliver the Products in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.4 Any time specified by Pentel for Delivery of the Products is an estimate only. The Customer must take Delivery by receipt or collection of the Products whenever they are tendered for Delivery. Pentel will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. In the event that the Customer is unable to take Delivery of the Products as arranged then Pentel shall be entitled to charge a reasonable fee for redelivery and/or storage.

7. Risk

- 7.1 Risk of damage to or loss of the Products passes to the Customer on Delivery and the Customer must insure the Products on or before Delivery.
- 7.2 If any of the Products are damaged or destroyed following Delivery but prior to ownership passing to the Customer, Pentel is entitled to receive all insurance proceeds payable for the Products. The production of these terms and conditions by Pentel is sufficient evidence of Pentel's rights to receive the insurance proceeds without the need for any person dealing with Pentel to make further enquiries.
- 7.3 If the Customer requests Pentel to leave Products outside Pentel's premises for collection or to deliver the Products to an unattended location, then such Products shall be left at the Customer's sole risk.

8. Title

- 8.1 Pentel and the Customer agree that ownership of the Products shall not pass until:
- (a) the Customer has paid Pentel all amounts owing to Pentel; and
 - (b) the Customer has met all of its other obligations to Pentel.

Pentel (Australia) Pty Limited – Terms & Conditions of Trade

- 8.2 Receipt by Pentel 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.
- 8.3 It is further agreed that, until ownership of the Products passes to the Customer in accordance with clause 8.1:
- (a) the Customer is only a bailee of the Products and must return the Products to Pentel on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Products on trust for Pentel and must pay to Pentel the proceeds of any insurance in the event of the Products being lost, damaged or destroyed;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Products other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Products then the Customer must hold the proceeds of any such act on trust for Pentel and must pay or deliver the proceeds to Pentel on demand;
 - (d) the Customer should not convert or process the Products 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 Pentel and must sell, dispose of or return the resulting product to Pentel as it so directs;
 - (e) the Customer irrevocably authorises Pentel to enter any premises where Pentel believes the Products are kept and recover possession of the Products;
 - (f) Pentel may recover possession of any Products in transit whether or not Delivery has occurred;
 - (g) the Customer shall not charge or grant an encumbrance over the Products nor grant nor otherwise give away any interest in the Products while they remain the property of Pentel;
 - (h) Pentel may commence proceedings to recover the Price of the Products sold notwithstanding that ownership of the Products has not passed to the Customer.

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

- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 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 Products and/or collateral (account) – being a monetary obligation of the Customer to Pentel for Services – that have previously been supplied and that will be supplied in the future by Pentel to the Customer.
- 9.3 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 Pentel may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Pentel 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 Products charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Pentel;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Products and/or collateral (account) in favour of a third party without the prior written consent of Pentel;
 - (e) immediately advise Pentel of any material change in its business practices of selling the Products which would result in a change in the nature of proceeds derived from such sales.
- 9.4 Pentel 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.
- 9.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by Pentel, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Customer must unconditionally ratify any actions taken by Pentel under clauses 9.3 to 9.5.
- 9.9 Subject to any express provisions to the contrary (including those contained in this clause 9), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

10. Security and Charge

- 10.1 In consideration of Pentel agreeing to supply the Products, 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).
- 10.2 The Customer indemnifies Pentel from and against all Pentel's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Pentel's rights under this clause.
- 10.3 The Customer irrevocably appoints Pentel and each director of Pentel as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.

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

- 11.1 The Customer must inspect the Products on Delivery and must within seven (7) days of Delivery notify Pentel in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Products as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Pentel to inspect the Products.

Pentel (Australia) Pty Limited – Terms & Conditions of Trade

- 11.2 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**).
- 11.3 Pentel acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Pentel makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Products. Pentel's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Customer is a consumer within the meaning of the CCA, Pentel's liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If Pentel is required to replace the Products under this clause or the CCA, but is unable to do so, Pentel may refund any money the Customer has paid for the Products.
- 11.7 If the Customer is not a consumer within the meaning of the CCA, Pentel's liability for any defect or damage in the Products is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by Pentel at Pentel's sole discretion;
 - (b) limited to any warranty to which Pentel is entitled, if Pentel did not manufacture the Products;
 - (c) otherwise negated absolutely.
- 11.8 Subject to this clause 11, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 11.1; and
 - (b) Pentel has agreed that the Products are defective; and
 - (c) the Products are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Products are returned in as close a condition to that in which they were delivered as is possible.
- 11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, Pentel 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 any Products;
 - (b) the Customer using the Products for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Products after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by Pentel;
 - (e) fair wear and tear, any accident, or act of God.
- 11.10 Pentel may in its absolute discretion accept non-defective Products for return in which case Pentel may require the Customer to pay handling fees of up to fifteen percent (15%) of the value of the returned Products plus any freight costs.
- 11.11 Notwithstanding anything contained in this clause if Pentel is required by a law to accept a return then Pentel will only accept a return on the conditions imposed by that law.

12. Default and Consequences of Default

- 12.1 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 Pentel's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 If the Customer owes Pentel any money the Customer shall indemnify Pentel from and against all costs and disbursements incurred by Pentel in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Pentel's contract default fee, and bank dishonour fees).
- 12.3 Further to any other rights or remedies Pentel may have under this Agreement, if a Customer has made payment to Pentel, 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 Pentel under this clause 12 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Agreement.
- 12.4 Without prejudice to Pentel's other remedies at law Pentel shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Pentel shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Pentel becomes overdue, or in Pentel's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by Pentel;
 - (c) 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

13. Cancellation

- 13.1 Without prejudice to any other remedies Pentel may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Pentel may suspend or terminate the supply of Products to the Customer. Pentel will not be liable to the Customer for any loss or damage the Customer suffers because Pentel has exercised its rights under this clause.
- 13.2 Pentel may cancel any contract to which these terms and conditions apply or cancel Delivery of Products at any time before the Products are delivered by giving written notice to the Customer. On giving such notice Pentel shall repay to the Customer any money paid by the Customer for the Products. Pentel shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.3 In the event that the Customer cancels Delivery of Products the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Pentel as a direct result of the cancellation (including, but not limited to, any loss of profits).

14. Privacy Policy

- 14.1 All emails, documents, images or other recorded information held or used by Pentel is Personal Information, as defined and referred to in clause 14.3, and therefore considered Confidential Information. Pentel acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy

Pentel (Australia) Pty Limited – Terms & Conditions of Trade

- Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area (“EEA”), under the EU Data Privacy Laws (including the General Data Protection Regulation “GDPR”) (collectively, “EU Data Privacy Laws”). Pentel acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by Pentel that may result in serious harm to the Customer, Pentel will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 14.2 Notwithstanding clause 14.1, privacy limitations will extend to Pentel in respect of Cookies where transactions for purchases/orders transpire directly from Pentel’s website. Pentel agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer’s:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Pentel when Pentel sends an email to the Customer, so Pentel may collect and review that information (“collectively Personal Information”)
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Pentel’s website.
- 14.3 The Customer agrees for Pentel to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by Pentel.
- 14.4 The Customer agrees that Pentel 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.
- 14.5 The Customer consents to Pentel being given a consumer credit report to collect overdue payment on commercial credit.
- 14.6 The Customer agrees that personal credit information provided may be used and retained by Pentel for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Products; and/or
 - (b) analysing, verifying and/or checking the Customer’s credit, payment and/or status in relation to the provision of Products; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Products.
- 14.7 Pentel may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 14.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 14.3 above;
 - (b) name of the credit provider and that Pentel is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) 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);
 - (f) 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 Pentel has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of Pentel, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer’s overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 14.9 The Customer shall have the right to request (by e-mail) from Pentel:
- (a) a copy of the Personal Information about the Customer retained by Pentel and the right to request that Pentel correct any incorrect Personal Information; and
 - (b) that Pentel does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 14.10 Pentel will destroy Personal Information upon the Customer’s request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Agreement or is required to be maintained and/or stored in accordance with the law.
- 14.11 The Customer can make a privacy complaint by contacting Pentel via e-mail. Pentel 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.
- 15. Service of Notices**
- 15.1 Any written notice given under this Agreement shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Agreement;
 - (c) by sending it by registered post to the address of the other party as stated in this Agreement;

Pentel (Australia) Pty Limited – Terms & Conditions of Trade

- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Agreement (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 15.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 16. Trusts**
- 16.1 If the Customer at any time upon or subsequent to entering in to the Agreement is acting in the capacity of trustee of any trust ("Trust") then whether or not Pentel may have notice of the Trust, the Customer covenants with Pentel as follows:
- (a) the Agreement extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - (b) the Customer has full and complete power and authority under the Trust to enter into the Agreement and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Customer will not without consent in writing of Pentel (Pentel will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.
- 17. General**
- 17.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which Pentel has its principal place of business, and are subject to the jurisdiction of the Ryde Courts in that state.
- 17.3 Subject to clause 11, Pentel shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Pentel of these terms and conditions (alternatively Pentel's liability shall be limited to damages which under no circumstances shall exceed the Price of the Products).
- 17.4 Pentel may licence and/or assign all or any part of its rights and/or obligations under this Agreement without the Customer's consent.
- 17.5 The Customer cannot licence or assign without the written approval of Pentel.
- 17.6 Pentel may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Agreement by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Pentel's sub-contractors without the authority of Pentel.
- 17.7 The Customer agrees that Pentel may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Pentel to provide Products to the Customer.
- 17.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 17.9 Both parties warrant that they have the power to enter into this Agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Agreement creates binding and valid legal obligations on them.