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## Casafico Pty Ltd – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **"Casafico"** means Casafico Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Casafico Pty Ltd.
- 1.3 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Casafico 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 **"Goods"** means all Goods or Services supplied by Casafico 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).
- 1.5 **"Intended Use"** means a building product and the use thereof, for which the building product is intended to be, or is reasonably likely to be, associated with a building.
- 1.6 **"Non-Conforming Building Product"** means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:  
(a) the product is not, or will not be, safe; or  
(b) does not, or will not, comply with the relevant regulatory provisions; or  
(c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.7 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.8 **"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 using Casafico's 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 making enquiries via the website.**
- 1.9 **"Price"** means the Price payable (plus any GST where applicable) for the Goods as agreed between Casafico and the Customer in accordance with clause 8 below.
- 1.10 **"GST"** means Goods and Services Tax (GST) 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 Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges and accepts that:  
(a) the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Casafico and it has been approved with a credit limit established for the account.  
(b) in the event that the supply of Goods request exceeds the Customers credit limit and/or the account exceeds the payment terms, Casafico reserves the right to refuse delivery.  
(c) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Casafico reserves the right to vary the Price with suitable comparable Goods (or components of the Goods) as per clause 9.2, subject to prior confirmation and agreement of both parties.
- 2.5 All literature, samples, specifications, submitted with this quotation is expressly illustrative and is by way of a general description of Goods only in accordance with industry standards. Any descriptions, dimensions or specifications contained in catalogues and other advertising material while being as accurate as possible but may not necessarily be identical with products and Services Casafico is to supply. Casafico will not accept liability to the Customer for quality of Goods which comply with accepted industry standards.
- 2.6 Where Casafico gives any advice, recommendation, information, assistance or service provided by Casafico in relation to Goods or Services supplied is given in good faith to the Customer, or the Customer's agent and is based on Casafico's own knowledge and experience and shall be accepted without liability on the part of Casafico. Where such advice or recommendations are not acted upon then Casafico shall require the Customer or their agent to authorise commencement of the Services in writing. Casafico shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.7 These terms and conditions may be meant to be read in conjunction with Casafico's Hire Form, and where the context so permits, the terms 'Goods' or 'Services' shall include any supply of Equipment, as defined therein.

### 3. Electronic Transactions Act

- 3.1 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 (NSW), the Electronics Communications Act 2000 (SA), the Electronic Transactions Act 2001 (ACT), the Electronic Transactions (Victoria) Act 2000, the Electronic Transactions (Northern Territory) Act 2000, Section 10 of the Electronic Transactions Act 2011 (WA), Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (TAS), (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.

**4. Authorised Representatives**

4.1 The Customer acknowledges that Casafico shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to Casafico, that person shall have the full authority of the Customer to order any Services, Goods and/or to request any variation thereto on the Customer's behalf. The Customer accepts that they will be solely liable to Casafico for all additional costs incurred by Casafico (including Casafico's profit margin) in providing any Services, Goods or variation/s requested thereto by the Customer's duly authorised representative.

**5. Errors and Omissions**

5.1 The Customer acknowledges and accepts that Casafico 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 Casafico in the formation and/or administration of this Contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Casafico in respect of the Services.

5.2 In the event such an error and/or omission occurs in accordance with clause 5.1, and is not attributable to the negligence and/or wilful misconduct of Casafico; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

**6. Change in Control**

6.1 The Customer shall give Casafico 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 in trustees, or business practice). The Customer shall be liable for any loss incurred by Casafico as a result of the Customer's failure to comply with this clause.

**7. On-Line Ordering**

7.1 The Customer acknowledges and agrees that:

- (a) Casafico does not guarantee the website's performance;
- (b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by Casafico;
- (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
- (d) there are inherent hazards in electronic distribution, and as such Casafico cannot warrant against delays or errors in transmitting data between the Customer and Casafico including orders, and you agree that to the maximum extent permitted by law, Casafico will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
- (e) when making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by Casafico and/or displayed on the website. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences; and
- (f) if the Customer is not the cardholder for any credit card being used to pay for the Goods, Casafico shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.

7.2 Casafico reserves the right to terminate the Customer's order if it learns that you have provided false or misleading information, interfered with other users or the administration of Casafico's business, or violated these terms and conditions.

**8. Distribution of Goods via an Approved Reseller**

8.1 The Customer agrees that until they are authorised as a distributor by Casafico, (and hereinafter the Customer shall be referred to as "Reseller" for the purposes of this clause) the Reseller shall not be able to sell the Goods on as a Reseller for Casafico or represent to any third parties that the Reseller is in any way acting for Casafico. Casafico shall not accept responsibility or agree to be bound in any way by any contracts with third parties to whom the Reseller is a party.

8.2 At Casafico's sole discretion the Reseller acknowledges that only approved Resellers shall have the authority to accept internet orders via their respective website and/or any alternative online auction sites.

8.3 Orders from a Reseller are accepted on the basis that:

- (a) unless otherwise agreed by prior approval between Casafico and the Reseller, Goods may only be resold to consumers at retail level and may not be sold at wholesale level or to any other trader that is known or is suspected to be purchasing for resale;
- (b) Goods are to be sold for retail or displayed for sale at only the nominated locations advised by the Reseller to Casafico;
- (c) sale of Goods by mail order, internet or any other method outside of the traditional display and sell at the approved location is prohibited without prior written consent of Casafico; and
- (d) Goods are to be displayed, presented and marketed in the manner that is in the best interest of the brand name.

8.4 Any default of clauses 8.1-8.3 may at Casafico's sole discretion be subject to immediate and permanent closure of account facilities, with any account balances payable immediately on demand.

8.5 Casafico has sole discretion on which brands or Goods are made available to any approved Reseller and Casafico does not guarantee continuing supply of any specific brand or Goods.

**9. Price and Payment**

9.1 At Casafico's sole discretion, the Price shall be either:

- (a) as indicated on any invoice provided by Casafico to the Customer; or
- (b) the Price as at the date of delivery of the Goods according to Casafico's current price list; or
- (c) Casafico's quoted price (subject to clause 9.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

9.2 Casafico reserves the right to change the Price:

- (a) if a variation to the Goods 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

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- (c) if during the course of the Services, the Goods or components of the Goods are not or cease available from Casafico third party suppliers, then Casafico reserves the right to provide suitable comparable Goods (or components of the Goods); or
  - (d) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, changes to the scope of the works) which are only discovered on commencement of the Services; or
  - (e) in the event of increases to Casafico in the cost of labour or materials which are beyond Casafico's control.
- 9.3 Variations will be charged for on the basis of Casafico's quotation, and will be detailed in writing, and shown as variations on Casafico's invoice. The Customer shall be required to respond to any variation submitted by Casafico within ten (10) business days. Failure to do so will entitle Casafico 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.
- 9.4 At Casafico's sole discretion, a non-refundable deposit may be required.
- 9.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Casafico, which may be:
- (a) on delivery of the Goods;
  - (b) before delivery of the Goods;
  - (c) by way of instalments/progress payments in accordance with Casafico's payment schedule;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, unless otherwise agreed between the parties in writing, the date which is seven (7) days following the date of any invoice given to the Customer by Casafico.
- 9.6 Payment may be made by, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Casafico.
- 9.7 Casafico may in its discretion allocate any payment received from the Customer towards any invoice that Casafico determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Casafico may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Casafico, payment will be deemed to be allocated in such manner as preserves the maximum value of Casafico's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 9.8 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 Casafico nor to withhold payment of any invoice because part of that invoice is in dispute.
- 9.9 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Casafico an amount equal to any GST Casafico must pay for any supply by Casafico under this or any other contract for the sale of the Goods. 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.
- 10. Delivery of Goods**
- 10.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Casafico's address; or
  - (b) Casafico (or Casafico's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 10.2 At Casafico's sole discretion, the cost of delivery is in addition to the Price.
- 10.3 Subject to clause 10.4 it is Casafico responsibility to ensure that the Services start as soon as it is reasonably possible.
- 10.4 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Casafico claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Casafico's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
  - (b) have the site ready for the Services; or
  - (c) notify Casafico that the site is ready.
- 10.5 Casafico may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 10.6 The Customer acknowledges and accepts that where the Goods are not collected within two (2) business days of advice to the Customer that they are ready for collection, then Casafico (at its sole discretion) may charge a reasonable fee for storage which shall be at a rate of ten dollars (\$10) per standard pallet space per day.
- 10.7 Any time specified by Casafico for delivery of the Goods is an estimate only and Casafico will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that Casafico is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then Casafico shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 11. Risk**
- 11.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 11.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Casafico is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Casafico is sufficient evidence of Casafico's rights to receive the insurance proceeds without the need for any person dealing with Casafico to make further enquiries.
- 11.3 If the Customer requests Casafico to leave Goods outside Casafico's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 11.4 The Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and Services incidental thereto and Casafico shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.
- 11.5 Casafico shall not be held liable for any costs, losses or damages where there are delays to pre-constructions work not being completed by either third parties or circumstances beyond Casafico's control.

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- 11.6 The Customer acknowledges and accepts that Goods supplied may:
- (a) exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations; and
  - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
  - (c) mark or stain if exposed to certain substances; and
  - (d) be damaged or disfigured by impact or scratching
- 11.7 Casafico shall not be liable for any defect or damage resulting from incorrect or faulty installation carried out by the Customer or any other third party.

### 12. Dimensions, Plans and Specifications

- 12.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Goods unless Casafico and the Customer agree otherwise in writing.
- 12.2 Casafico shall be entitled to rely on the accuracy of any plans, specifications (including, but not limited to CAD drawings) and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, Casafico accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information
- 12.3 If the giving of an estimate or quotation for the supply of Goods involves Casafico estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of Casafico's estimated measurements and quantities, before the Customer places an order based on such estimate or accepts such quotation.
- 12.4 Should the Customer require any changes to Casafico estimated measurements and quantities, the Customer shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.

### 13. Customer's Responsibilities

- 13.1 It is the intention of Casafico and agreed by the Customer that it is the responsibility of the Customer to provide and have erected scaffolding to enable the Services to be undertaken (where in Casafico's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed.
- 13.2 The Customer agrees to remove any furniture, furnishings or personal goods from the vicinity of the Services and agrees that Casafico shall not be liable for any damage caused to those items through the Customer's failure to comply with this clause.
- 13.3 Casafico is not responsible for the removal of rubbish or for the clean-up of the building/construction site/s. This is the responsibility of the Customer or the Customer's agent. Furthermore the Customer acknowledges that in the event asbestos, synthetic mineral fibres or any other toxic substances are discovered at the site that it is their responsibility to ensure the safe removal of the same. The Customer further agrees to indemnify Casafico against any costs incurred by Casafico as a consequence of such discovery. Under no circumstances will Casafico handle the removal of asbestos product.

### 14. Access

- 14.1 The Customer shall ensure that Casafico has clear and free access to the site at all times to enable them to undertake the Services. Casafico shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Casafico.

### 15. Compliance with Laws

- 15.1 The Customer and Casafico shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any occupational health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- 15.2 Both parties acknowledge and agree:
- (a) to comply with the National Construction Code of Australia (NCC) and all other State/Territory Acts, in respect of all workmanship and building products to be supplied during the course of the Services; and
  - (b) that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 15.3 Where the Customer has supplied products for Casafico to complete the Services, the Customer acknowledges that it accepts responsibility for the suitability of purpose and are for their Intended Use and any faults inherent in those products. However, if in Casafico's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with state and/or territory regulations, then Casafico shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 9.2.
- 15.4 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 15.5 Casafico shall comply with the terms and conditions of all such consents and approvals in so far as such consents and approvals relate to the carrying out of the Services.

### 16. Title

- 16.1 Casafico and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Casafico all amounts owing to Casafico; and
  - (b) the Customer has met all of its other obligations to Casafico.
- 16.2 Receipt by Casafico 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.
- 16.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 16.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to Casafico on request.

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- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Casafico and must pay to Casafico the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (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 Casafico and must pay or deliver the proceeds to Casafico on demand.
- (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 Casafico and must sell, dispose of or return the resulting product to Casafico as it so directs.
- (e) the Customer irrevocably authorises Casafico to enter any premises where Casafico believes the Goods are kept and recover possession of the Goods.
- (f) Casafico may recover possession of any Goods in transit whether or not delivery has occurred.
- (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 Casafico.
- (h) Casafico may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

### 17. Personal Property Securities Act 2009 ("PPSA")

- 17.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 17.2 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 collateral (account) – being a monetary obligation of the Customer to Casafico for Services – that have previously been supplied and that will be supplied in the future by Casafico to the Customer.
- 17.3 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 Casafico 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 17.3(a)(i) or 17.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, Casafico for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of Casafico;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Casafico;
  - (e) immediately advise Casafico 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.
- 17.4 Casafico 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.
- 17.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 17.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 17.7 Unless otherwise agreed to in writing by Casafico, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 17.8 The Customer must unconditionally ratify any actions taken by Casafico under clauses 17.3 to 17.5.
- 17.9 Subject to any express provisions to the contrary (including those contained in this clause 17) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 18. Security and Charge

- 18.1 In consideration of Casafico 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).
- 18.2 The Customer indemnifies Casafico from and against all Casafico's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Casafico's rights under this clause.
- 18.3 The Customer irrevocably appoints Casafico and each director of Casafico as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 18 including, but not limited to, signing any document on the Customer's behalf.

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

- 19.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify Casafico 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 Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Casafico to inspect the Goods.
- 19.2 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**).
- 19.3 Casafico acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

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- 19.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Casafico makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Casafico's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 19.5 If the Customer is a consumer within the meaning of the CCA, Casafico's liability is limited to the extent permitted by section 64A of Schedule 2.
- 19.6 If Casafico is required to replace the Goods under this clause or the CCA, but is unable to do so, Casafico may refund any money the Customer has paid for the Goods.
- 19.7 If the Customer is not a consumer within the meaning of the CCA, Casafico's 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 Casafico at Casafico's sole discretion;
  - (b) limited to any warranty to which Casafico is entitled, if Casafico did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 19.8 Subject to this clause 19, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 19.1; and
  - (b) Casafico has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 19.9 Notwithstanding clauses 19.1 to 19.8 but subject to the CCA, Casafico 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 Goods;
  - (b) the Customer using the Goods for any purpose other than that for which they were designed;
  - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Customer failing to follow any instructions or guidelines provided by Casafico;
  - (e) fair wear and tear, any accident, or act of God.
- 19.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Casafico as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that Casafico has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 19.10.
- 19.11 Notwithstanding anything contained in this clause if Casafico is required by a law to accept a return then Casafico will only accept a return on the conditions imposed by that law.

### 20. Intellectual Property

- 20.1 Where Casafico has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Casafico. Under no circumstances may such designs, drawings and documents be used without the express written approval of Casafico.
- 20.2 The Customer warrants that all designs, specifications or instructions given to Casafico will not cause Casafico to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Casafico against any action taken by a third party against Casafico in respect of any such infringement.
- 20.3 The Customer agrees that Casafico may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Casafico has created for the Customer.

### 21. Default and Consequences of Default

- 21.1 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 Casafico's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Customer owes Casafico any money the Customer shall indemnify Casafico from and against all costs and disbursements incurred by Casafico in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Casafico's contract default fee, and bank dishonour fees).
- 21.3 Further to any other rights or remedies Casafico may have under this Contract, if a Customer has made payment to Casafico, 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 Casafico under this clause 21 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.
- 21.4 Without prejudice to Casafico's other remedies at law Casafico shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Casafico shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Casafico becomes overdue, or in Casafico'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 Casafico;
  - (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.

### 22. Cancellation

- 22.1 Without prejudice to any other remedies Casafico may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Casafico may suspend or terminate the supply of Goods to the Customer. Casafico will not be liable to the Customer for any loss or damage the Customer suffers because Casafico has exercised its rights under this clause.

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- 22.2 Casafico may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Casafico shall repay to the Customer any money paid by the Customer for the Goods. Casafico shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Casafico as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 23. Privacy Policy

- 23.1 All emails, documents, images or other recorded information held or used by Casafico is Personal Information, as defined and referred to in clause 23.3, and therefore considered Confidential Information. Casafico 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 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"). Casafico acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Casafico that may result in serious harm to the Customer, Casafico 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.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to Casafico in respect of Cookies where the Customer utilises Casafico's website to make enquiries. Casafico 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 Casafico when Casafico sends an email to the Customer, so Casafico may collect and review that information ("collectively Personal Information")
- If the Customer consents to Casafico's use of Cookies on Casafico's website and later wishes to withdraw that consent, the Customer may manage and control Casafico's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 23.3 The Customer agrees that Casafico 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.
- 23.4 The Customer consents to Casafico being given a consumer credit report to collect overdue payment on commercial credit.
- 23.5 The Customer agrees that personal credit information provided may be used and retained by Casafico for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 23.6 Casafico 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.
- 23.7 The information given to the CRB may include:
- (a) Personal Information as outlined in 23.3 above;
  - (b) name of the credit provider and that Casafico 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 Casafico has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of Casafico, 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).
- 23.8 The Customer shall have the right to request (by e-mail) from Casafico:
- (a) a copy of the Personal Information about the Customer retained by Casafico and the right to request that Casafico correct any incorrect Personal Information; and
  - (b) that Casafico does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 23.9 Casafico 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 Contract or is required to be maintained and/or stored in accordance with the law.
- 23.10 The Customer can make a privacy complaint by contacting Casafico via e-mail. Casafico 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

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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](http://www.oaic.gov.au).

### 24. Other Applicable Legislation

- 24.1 At Casafico's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Construction Contracts Act 2004 (Western Australia), Building Industry Fairness (Security of Payment) Act 2017 (Queensland), Construction Contracts (Security of Payments) Act (Northern Territory of Australia), Building and Construction Industry Security of Payments Act 2009 (Tasmania), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) may apply.
- 24.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 24.1 (each as applicable), except to the extent permitted by the Act where applicable.

### 25. Service of Notices

- 25.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 25.2 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.

### 26. Trusts

- 26.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Casafico may have notice of the Trust, the Customer covenants with Casafico as follows:
- (a) the Contract 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 Contract 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 Casafico (Casafico 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.

### 27. General

- 27.1 For the purposes of this Contract a "business day" shall mean any day which is not a Saturday, Sunday, public holiday, special holiday, or a bank holiday in the state in which this Contract is applied. If the giving of any notice, the making of any payment, or the doing of any act required or permitted under this Contract, the timing of which falls on a day which is not a working day, then the timing for such actions shall be extended and will be allowed to take place on the next working day, but no later.
- 27.2 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.
- 27.3 These terms and conditions and any contract to which they apply shall be governed by the laws in which state the Goods and/or Services were provided by Casafico to the Customer however, in the event of a dispute that deems necessary for the matter to be referred to a Magistrates or higher Court then jurisdiction will be subject to the courts in the state of Victoria in which Casafico has its principal place of business.
- 27.4 Subject to clause 19 Casafico 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 Casafico of these terms and conditions (alternatively Casafico's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 27.5 Casafico may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 27.6 The Customer cannot licence or assign without the written approval of Casafico.
- 27.7 Casafico may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Casafico's sub-contractors without the authority of Casafico.
- 27.8 The Customer agrees that Casafico 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 Casafico to provide Goods to the Customer.
- 27.9 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.
- 27.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.