

# Xtreme Mobile Marine Pty Ltd – Terms and Conditions of Trade

1. **Definitions** 5.7
- 1.1 "Client" means the person/s purchasing the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.2 "Works" means all Works provided by XMM to the Client at the Client's request from time to time (and where the context so permits shall include any supply of Parts as hereinafter defined).
- 1.3 "Parts" shall mean Parts supplied by XMM to the Client either separately, or as part of the Works (and where the context so permits shall include the provision of Works as defined above).
- 1.4 "Price" means the Price payable (plus any GST where applicable) for the Works as agreed between XMM and the Client in accordance with clause 4 below.
- 1.5 "Vessel" shall mean any vehicle of the Client expressly used for water travel and/or recreation, and described in any documentation supplied by the Client to XMM.
2. **Acceptance**
- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client (including persons on behalf of a Company or Partnership) places an order for or accepts provision of the Works.
- 2.2 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.
3. **Change in Control** 6.4
- 3.1 The Client shall give "Xtreme Mobile Marine Pty Ltd ("XMM") not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details. The Client shall be liable for any loss incurred by XMM as a result of the Client's failure to comply with this clause.
4. **Price and Payment**
- 4.1 At XMM's sole discretion the Price shall be either:
- 7.1 (a) as indicated on any invoice provided by XMM to the Client; or
- 7.1 (b) XMM's estimated Price (subject to clause 5) which shall not be deemed binding upon XMM.
- 4.2 The Client agrees that the prices stipulated are an estimate only and the actual Price may exceed the original estimate. The Client agrees to pay the actual Price as per XMM's payment terms.
- 4.3 At XMM's sole discretion, a deposit of up to fifty percent (50%) may be required in order to the Works to commence.
- 4.4 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by XMM, which may be:
- 7.2 (a) on completion of the Works;
- 7.2 (b) by way of instalments/progress payments in accordance with XMM's payment schedule;
- 7.2 (c) the date specified on any invoice or other form as being the date for payment; or
- 7.2 (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by XMM.
- 4.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by XMM nor to withhold payment of any invoice because part of that invoice is in dispute.
- 4.6 Unless otherwise stated the Price does not include GST. The Client must pay GST, any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 4.7 Receipt by XMM 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 XMM's rights or ownership in relation to the Works, and this agreement, shall continue.
- 4.8 The Client accepts that all Parts remain the property of XMM until payment is received in full and the Vessel may be seized until payment is received in full.
- 4.9 The Client accepts that any timeframes given are estimates only and actual timeframes may differ and fluctuate beyond XMM's control, including delays in obtaining necessary parts.
5. **Additional Charges**
- 5.1 XMM reserves the right to change the Price:
- 7.5 (a) if a variation to the Works which are to be provided is requested; or
- 7.5 (b) where additional Works are required due to the discovery of hidden or unidentifiable difficulties which are only discovered upon commencement of the Works; or
- 7.5 (c) in the event of increases to XMM in the cost of labour or Parts, which are beyond XMM's control.
- 5.2 All tow and/or salvage fees will be charged to the Client, and will be added to the Price.
- 5.3 If (at XMM's sole discretion) berthing is required, the Client shall be responsible for all associated costs.
- 5.4 If XMM has been requested by the Client to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.
- 5.5 The Client acknowledges and agrees that XMM shall be entitled to:
- 7.6 (a) retain any components replaced during the provision of the Works; and
- 7.6 (b) the right to retain all proceeds obtained from the sale of such components to any auto recycler or salvage yard.
- 5.6 XMM reserves its rights to review its Prices at the end of each financial year and change the Prices.
- For any Works undertaken under Warranty, the Client agrees to the following additional charges:
- 7.8 (a) If a labor issue is reported after three (3) months pursuant to clause 7.5(a), additional labour charges may be incurred by XMM.
- 7.8 (b) If a non-genuine Part issue is reported after three (3) months pursuant to clause 7.5(b), additional labour charges may be incurred by XMM
- Provision of the Works**
- The Client acknowledges that any pre-purchasing inspections conducted by XMM shall be limited to a visual inspection only. The Client agrees that the pre-purchase inspection does not examine specific Parts of the Vessel which would require removal from the Vessel to be adequately assessed. Where XMM is to provide any Works at the Client's nominated address, then the Client shall be liable for:
- 8.1 (a) all costs incurred by XMM from the time they depart from, and until they return to, their normal place of work (including, but not limited to, mileage and time calculated at XMM's standard rates and any Parts purchased for the Works); and
- 8.1 (b) a minimum call-out fee, which shall be increased for any after-hours call-outs.
- Any time specified by XMM for provision of the Works is an estimate only and XMM will not be liable for any loss or damage incurred by the Client as a result of any delay. In the event that XMM is unable to provide the Works as agreed solely due to any action or inaction of the Client then XMM shall be entitled to charge a reasonable fee for re-providing the Works at a later time and date.
- 8.2 Notwithstanding any remedies available under the CCA, XMM shall not be liable for any loss of income or other monetary gains where the Vessel is inoperable due to the delay or non-arrival of any outside sourced components that are beyond the control of XMM or where the Vessel is inoperable due to any damages incurred during travel that are beyond the control of XMM. Any damages payable shall be limited to the amount paid by the insurer.
- Risk**
- If XMM retains ownership of the Parts under clause 8.1 then, where XMM is supplying Parts, all risk for the Parts shall immediately pass to the Client on delivery and the Client must insure the Parts on or before delivery. Prior to delivery, all risk for the Parts shall immediately pass to the manufacturer. The Client accepts that XMM shall not be liable for the Parts at any stage. In the event of damage, the Client accepts that XMM may liaise with the manufacturer directly or may refer the Client to them. At XMM's sole discretion, the costs of delivery shall be in addition to the Price. Delivery of the Parts shall be deemed to have taken place immediately at the time that the Parts are delivered by XMM, or XMM's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address). If the Client requests XMM to deliver the Parts and/or Vessel to an unattended location, then such Parts and/or Vessel shall be left at the Client's sole risk.
- 8.3 The Client must take delivery (by receipt or collection of the Parts and/or Vessel) whenever either is tendered for delivery. In the event that the Client is unable to take delivery as arranged, then XMM shall be entitled to charge a reasonable fee for the redelivery and/or storage of the Parts and/or Vessel. Notwithstanding this clause 7.2, the failure of the Client to take delivery after a period of thirty (30) days will result in XMM enforcing their rights to execute the sale of the Parts and/or Vessel pursuant to clause 15.
- 8.4 The Client agrees that XMM will not be held responsible for any damages incurred during delivery. XMM's liability shall be limited to the insurance proceeds which shall be determined by the relevant insurance policy of XMM.
- 8.4 In the event that Parts and/or Vessel are held by XMM (for repair or otherwise), XMM undertakes to maintain a reasonable duty of care towards the Parts and/or Vessel but risk (including, but not limited to, insurance risk) in the Parts and/or Vessel remains with the Client, notwithstanding that property in the Parts may remain with XMM under clause 8.1. Under no circumstances shall the liability of XMM, for Parts and/or Vessel held by XMM, exceed the fair market thereof and the amount coverable by insurance. It is the Client's responsibility to ensure that the Vessel is insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored at XMM's premises.
- The Client agrees and accepts:
- 9.3 (a) Any warranty claims relating to negligence of XMM or XMM's employees must be submitted via writing to the email address listed in the terms and conditions and/or XMM's website within three (3) months from the date of the Vessel being returned to the Client. Any warranty claims relating to faulty non-genuine parts must be submitted via writing to the email listed within the terms and conditions and/or XMM's website within six (6) months from the date of the Vessel being returned to the Client and any warranty claims relating to faulty genuine parts must be submitted via writing to the email listed within the terms and conditions and/or XMM's website within twelve (12) months from the date of the Vessel being returned to the Client.
- Pursuant to Clause 7.5 above, labour expenses will be incurred for all warranty claims submitted after three (3) months from the date the vessel was returned to the Client, including but not limited to any genuine or non-genuine Part repairs required.
- The Client acknowledges that XMM is only responsible for Parts that are replaced by XMM and works done by XMM and does not at any stage accept any liability in respect of previous services and/or components supplied by any other third party.
- In the event that the Client has works done by any other party other than XMM after retaining the services of XMM, XMM cannot warrant any Works done.
- The Client acknowledges that XMM or its employees may test drive or carry out tests on the Vessel (at XMM's discretion), or (where required) tow the Vessel either on water or road, or may be requested by the Client to collect or re-deliver the Vessel. XMM will not be liable for (and the Client indemnifies XMM against) any damages caused to, or by, the Vessel during such tests, towing, collection or delivery unless it arises from the recklessness or wilful misconduct of XMM or its employees.
- The Client accepts and acknowledges that XMM shall not accept liability for any damage or loss including personal injury or death in the event that the Client chooses to install Parts that subsequently prove to be insufficient for the purposes that the Client desired to achieve.
- Title**
- The Client acknowledges and agrees that the Client's obligations to XMM for the provision of Works shall not cease, and subsequent ownership of the Parts shall not pass, until:
- (a) the Client has paid XMM all amounts owing for the Works; and
- (b) the Client has met all other obligations due by the Client to XMM in respect of all contracts between XMM and the Client.
- It is further agreed that, until ownership of the Parts passes to the Client in accordance with clause 8.1:
- (a) the Client is only a bailee of the Parts and must return the Parts to XMM on request.
- (b) the Client holds the benefit of the Client's insurance of the Parts on trust for XMM and must pay to XMM the proceeds of any insurance in the event of the Parts being lost, damaged or destroyed.
- (c) the Client must not sell, dispose, or otherwise part with possession of the Parts other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Parts then the Client must hold the proceeds of any such act on trust for XMM and must pay or deliver the proceeds to XMM on demand.
- (d) the Client should not convert or process the Parts or intermix them with other Parts but if the Client does so then the Client holds the resulting product on trust for the benefit of XMM and must sell, dispose of or return the resulting product to XMM as it so directs.
- (e) the Client irrevocably authorises XMM to enter any premises where XMM believes the Parts are kept and recover possession of the Parts.
- (f) XMM may recover possession of any Parts in transit whether or not delivery has occurred.
- (g) the Client shall not charge or grant an encumbrance over the Parts nor grant nor otherwise give away any interest in the Parts while they remain the property of XMM.
- (h) XMM may commence proceedings to recover the Price notwithstanding that ownership of the Parts has not passed to the Client.
- The Client agrees that XMM may commence debt recovery proceedings or issue a lien on the Vessel to recoup any losses incurred as a result of the Client's failure to pay the Price, including but not limited to:
- (a) The Price;
- (b) Interest at a rate of 2.5% per calendar month from the date payment is due;
- (c) Indemnity Costs (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, lien fees (including marshal and storage costs, XMM's contract default fees, and bank dishonour fees).
- The Client agrees that the Vessel may be seized for the purposes of 8.3 above.
- Personal Property Securities Act 2009 ("PPSA")**
- In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- (a) all Parts previously provided by XMM to the Client;
- (b) all Parts will be provided in the future by XMM to the Client; and
- (c) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to XMM for Works – that have previously been provided and that will be provided in the future by XMM to the Client.
- The Client 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 XMM 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 9.2(a)(i) or 9.2(a)(ii);
- (b) indemnify, and upon demand reimburse, XMM for all expenses incurred in registering a financing statement or financing change statement on the Personal Property

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- Securities Register established by the PPSA or releasing any registration made thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of XMM; 11.10
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the registration in favour of a third party without the prior written consent of XMM; 11.11
- (e) immediately advise XMM of any material change in its business practices of selling Parts and/or any Vessel which would result in a change in the nature of proceeds derived from such sales. 11.12
- 9.4 XMM and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions. 12.
- 9.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA. 12.1
- 9.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA. 12.2
- 9.7 Unless otherwise agreed to in writing by XMM, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA. 12.3
- 9.8 The Client must unconditionally ratify any actions taken by XMM under clauses 9.2 to 9.5. 12.3
- 9.9 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. 12.4
- 10. Security and Charge**
- 10.1 In consideration of XMM agreeing to provide the Works, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). 12.5
- 10.2 The Client indemnifies XMM from and against all XMM's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising XMM's rights under this clause. 12.5
- 10.3 The Client irrevocably appoints XMM and each director of XMM as the Client'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 Client's behalf. 12.5
- 11. Defects, Warranties and Returns, Competition and 13. Consumer Act 2010 (CCA)**
- 11.1 The Client must inspect the Works on completion (or Parts on delivery) and must within seven (7) days of such time notify XMM in writing of any evident defect/damage, shortage in quantity, error or omission, or failure to comply with the description or estimate. Upon such notification, the Client must allow XMM to inspect/review the Works. 13.1
- 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"). 13.2
- 11.3 XMM acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees. 13.2
- 11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, XMM makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Works. XMM's liability in respect of these warranties is limited to the fullest extent permitted by law. 13.3
- 11.5 If the Client is a consumer within the meaning of the CCA, XMM's liability is limited to the extent permitted by section 64A of Schedule 2. 14.
- 11.6 If XMM is required to rectify, re-provide, or pay the cost of re-providing the Works under this clause of the CCA, but is unable to do so, then XMM may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works which have been provided to the Client which were not defective. 14.1
- 11.7 The Client agrees to:
- (a) Pay all shipping costs where rectification is not necessary or is necessary at no fault of XMM; 14.2
- (b) Pay all storage costs and third party costs where rectification is not necessary or is necessary at no fault of XMM. 14.2
- 11.8 If the Client is not a consumer within the meaning of the CCA, XMM's liability for any defect or damage in the Works is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by XMM at XMM's sole discretion; 14.3
- (b) limited to any warranty to which XMM is entitled, if XMM did not manufacture the Parts; 14.3
- (c) otherwise negated absolutely. 14.3
- 11.9 Notwithstanding clauses 11.1 to 11.8, but subject to the CCA, XMM 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 Client failing to properly maintain or store the Parts and/or Vessel; 14.3
- (b) the Client using the Parts and/or Vessel for any purpose other than that for which it was designed; 14.4
- (c) the Client continuing the use of the Parts and/or Vessel after any defect became apparent or should have become apparent to a reasonably prudent operator or user; 14.4
- (d) the Client failing to follow any instructions or guidelines provided by XMM; 14.4
- (e) fair wear and tear, any accident, or act of God; 14.4
- (f) The Client failing to follow the professional advice given by XMM regarding repairs; 14.4
- (g) The Client refusing to do works as recommended by 14.5 XMM. 14.5
- (h) The Client having Works done by a party other than 14.6 XMM. 14.6
- XMM may in its absolute discretion accept non-defective Parts for return, in which case XMM may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Parts, plus any freight costs. 14.7
- Notwithstanding anything contained in this clause if XMM is required by a law to accept a return then XMM will only accept a return on the conditions imposed by that law. 14.7
- The Client acknowledges XMM will not be held liable for any damages or defects incurred as a result of the Client's failure to undertake works as required by XMM. 14.7
- Default and Consequences of Default**
- 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 XMM's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment. 14.8
- If the Client has made payment to XMM by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by XMM under this clause 12. 14.8
- If at any time the Client is in breach of any obligation under these terms and conditions XMM may suspend or terminate the provision of Works to the Client. XMM will not be liable to the Client for any loss or damage the Client suffers because XMM has exercised its rights under this clause. 15.
- Without prejudice to XMM's other remedies at law XMM shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to XMM shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to XMM becomes overdue, or in XMM's opinion the Client will be unable to make a payment when it falls due; 15.1
- (b) the Client 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 15.1
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client. 15.1
- Cancellation**
- XMM may cancel any contract to which these terms and conditions apply or cancel provision of the Works at any time before the Works have commenced (or the Parts are delivered) by giving written notice to the Client. On giving such notice XMM shall repay to the Client any money paid by the Client for the Works. XMM shall not be liable for any loss or damage whatsoever arising from such cancellation. 16.
- In the event that the Client cancels the provision of the Works, the Client shall be liable for any and all loss incurred (whether direct or indirect) by XMM as a direct result of the cancellation (including, but not limited to, any loss of profits). Cancellation of orders for Parts made to the Client's specifications, or for non-stocklist items, will not be accepted once an order has been placed. 16.2
- In the event of a cancellation pursuant to clause 13.1 and 13.2, XMM will not be liable for any loss or damage arising from any incomplete or partially complete works. 17.
- Privacy Policy**
- All emails, documents, images or other recorded information held or used by XMM is Personal Information, as defined and referred to in clause 14.3, and therefore considered Confidential Information. The XMM 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"). 17.2
- Notwithstanding clause 14.1, privacy limitations will extend to XMM in respect of Cookies where transactions for purchases/orders transpire directly from XMM's website. The XMM 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 Client's: 17.3
- (a) IP address, browser, email client type and other similar details; 17.4
- (b) tracking website usage and traffic; and 17.5
- (c) reports are available to XMM when XMM sends an email to the Client, so XMM may collect and review that information ("collectively Personal Information") 17.5
- The Client agrees for XMM to obtain from a credit reporting body (CRB) a credit report containing personal credit information about the Client in relation to credit provided by XMM. 17.6
- The Client agrees that XMM may exchange information about the Client with credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or 17.6
- (b) to notify other credit providers of a default by the Client; and/or 17.6
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or 17.6
- (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years. 17.6
- The Client consents to XMM being given a consumer credit report to collect overdue payment on commercial credit. 17.6
- The Client agrees that personal credit information provided may be used and retained by XMM for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or 17.6
- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or 17.6
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or 17.6
- (d) enabling the collection of amounts outstanding in relation to the Works. 17.6
- The Client shall have the right to request (by e-mail) from XMM:
- (a) a copy of the Personal Information about the Client retained by XMM and the right to request that XMM correct any incorrect Personal Information; and 17.6
- (b) that XMM does not disclose any Personal Information about the Client for the purpose of direct marketing. 17.6
- The Client can make a privacy complaint by contacting XMM via e-mail. The XMM 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 Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au). 17.6
- Unpaid Seller's Rights**
- Where the Client has left any item/s with XMM for repair, modification, exchange or for XMM to perform any other service in relation to the item/s and XMM has not received or been tendered the whole of any moneys owing to it by the Client, XMM shall have, until all moneys owing to XMM are paid:
- (a) a lien on the item/s; and 17.6
- (b) 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. 17.6
- Dispute Resolution**
- If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference, each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and 17.6
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration. 17.6
- Unless a party has complied with this clause, that party may not commence court proceedings relating to any dispute arising from these Terms and Conditions of Trade. 17.6
- General**
- 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. These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales the state in which XMM has its principal place of business, and are subject to the jurisdiction of the Paramatta Courts in that state. The XMM may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent. The Client cannot licence or assign without the written approval of XMM. The XMM may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of XMM's sub-contractors without the authority of XMM. The Client agrees that XMM may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for XMM to provide Works to the Client. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, pandemic, government requirements or other event beyond the reasonable control of either party. 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. 17.6