

EPS Paint Pty Ltd – Terms & Conditions of Trade

1.	Definitions	Customer must hold the proceeds of any such act on trust for EPS and must pay or deliver the proceeds to EPS on demand.	(a) any money payable to EPS becomes overdue, or in EPS' opinion the Customer will be unable to make a payment when it falls due; or
1.1	"EPS" means Essential Property Solutions Pty Ltd, its successors or assigns or any person acting on behalf of and with the authority of Essential Property Solutions Pty Ltd.	(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 behalf of the Customer and must sell, dispose of or return the resulting product to EPS as it so directs.	(b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
1.2	"Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.	(e) The Customer irrevocably authorises EPS to enter any premises where EPS believes the Goods are kept and recover possession of the Goods.	(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
1.3	"Goods" means all Goods or Services supplied by EPS 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).	(f) EPS may recover possession of any Goods in transit whether or not delivery has occurred.	17. Cancellation
1.4	"Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between EPS and the Customer in accordance with clause 5 below.	(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 EPS.	EPS 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 EPS shall repay to the Customer any money paid by the Customer for the Goods. EPS shall not be liable for any loss or damage whatsoever arising from such cancellation.
1.5	"GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Ch).	(h) EPS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.	In the event that the Customer cancels delivery of Services the Customer accepts that as the Goods are custom-made, cancellation of orders for Goods will definitely not be accepted once production has commenced, or an order placed, or specially tinted paint purchased for the Services. The Customer shall be liable for any and all loss incurred (whether direct or indirect) by EPS as a direct result of any cancellation (including, but not limited to, any loss of profits).
2.	Acceptance	12. Personal Property Securities Act 2009 ("PPSA")	18. Privacy Act 1988
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.	12.1 In this clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the PPSA.	18.1 The Customer agrees for EPS to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g., name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by EPS.
2.2	These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and EPS.	12.2 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 EPS for Services – that have previously been supplied and that will be supplied in the future by EPS to the Customer.	18.2 The Customer agrees that EPS may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
2.3	The Customer accepts that environmental factors such as temperature or other environmental/atmospheric conditions may affect the drying and/or curing time of the Goods. EPS shall not be held responsible for any losses or damage arising from such conditions where the Customer has not complied with the Services for a more favourable time to obtain optimal results and the Customer authorises the Services to proceed (in writing) against such recommendations.	12.3 The Customer undertakes to:	(a) to assess an application by the Customer; and/or
3.	Electronic Transactions (Queensland) Act 2001	(i) register a financing statement or financing charge statement in relation to a security interest on the Personal Property Securities Register;	(b) to notify other credit providers of a default by the Customer; and/or
3.1	Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.	(ii) register any other document required to be registered by the PPSA; or	(c) to obtain and provide information as to the status of this credit account, where the Customer is in default with other credit providers; and/or
4.	Change in Control	(iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);	(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
4.1	The Customer shall give EPS 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 numbers, or business practice). The Customer shall be liable for any loss incurred by EPS as a result of the Customer's failure to comply with this clause.	(iv) indemnify, and upon demand reimburse, EPS for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereto;	18.3 The Customer consents to EPS being given a consumer credit report to collect overdue payment on commercial credit.
5.	Price and Payment	(v) not register a financing charge statement in respect of a security interest without the prior written consent of EPS;	18.4 The Customer agrees that personal credit information provided may be used and retained by EPS for the following purposes (and for other agreed purposes or required by):
5.1	At EPS' sole discretion the Price shall be either:	(vi) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of EPS;	(a) the provision of Goods; and/or
5.2	(a) as indicated on any invoice provided by EPS to the Customer; or	(vii) immediately advise EPS 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.	(b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
5.3	(b) EPS' quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.	12.4 EPS and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the Customer's agreement to these terms and conditions.	(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
5.4	EPS reserves the right to change the Price if a variation to EPS' quotation is requested. Any variation from the plan of scheduled Services (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such as revision to plans, unfavourable weather conditions, limitations to accessing the site for any reason including cars parked or other obstructions, availability of machinery, safety considerations, prerequisite work by any third party not being completed, surfaces not being properly prepared, or as a result of any increase to EPS' in the cost of materials and labour) will be charged for on the basis of EPS' quotation and will be shown as variations on the invoice.	12.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.	(d) enabling the collection of amounts outstanding in relation to the Goods.
5.5	Time for payment for the Goods being of the essence. The Price will be payable by the Customer on the date/s determined by EPS, which may be:	12.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.	18.5 EPS may give information about the Customer to a CRB for the following purposes:
5.6	(a) by way of instalments/progress payments in accordance with EPS' payment schedule;	12.7 Unless otherwise agreed to in writing by EPS, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.	(a) to obtain and provide information as to the status of this credit account; and
5.7	(b) the date specified on any invoice or other form as being the date for payment; or	12.8 The Customer must unconditionally ratify any actions taken by EPS under clauses 12.3 to 12.5.	(b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
5.8	(c) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Customer by EPS.	13. Security and Charge	18.6 The information given to the CRB may include:
5.9	Payment may be made by electronic-on-line banking or by any other method as agreed between the Customer and EPS.	13.1 In consideration of EPS 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).	(a) personal information as outlined in 18.1 above;
5.10	Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to EPS an amount equal to any GST. EPS must pay for any supply by EPS under this or any other agreement 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.	13.2 The Customer indemnifies EPS from and against all EPS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising EPS' rights under this clause.	(b) name of the credit provider and that EPS is a current credit provider to the Customer;
6.	Delivery	13.3 The Customer irrevocably appoints EPS and each director of EPS as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.	(c) whether the credit provider is a licensee;
6.1	At EPS' sole discretion delivery of the Goods and/or Services shall take place when the Services are supplied to the Customer at the Customer's nominated address.	14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)	(d) type of consumer credit;
6.2	Delivery of the Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.	14.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify EPS 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 EPS to inspect the Goods.	(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);
6.3	At EPS' sole discretion, the cost of delivery is included in the Price.	14.2 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).	(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 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.
6.4	EPS may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.	14.3 EPS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.	(g) information that, in the opinion of EPS, the Customer has committed a serious credit infringement;
6.5	Any time specified by EPS for delivery of the Services is an estimate only and EPS 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 Services to be supplied at the time and place as was arranged between both parties. In the event that EPS is unable to supply the Services as agreed solely due to any action or inaction of the Customer then EPS shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.	14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, EPS makes no warranties or other representations under these terms and conditions and shall be limited to the quality or suitability of the Goods. EPS' liability in respect of these warranties is limited to the fullest extent permitted by law.	(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
7.	Risk	14.5 If the Customer is a consumer within the meaning of the CCA, EPS' liability is limited to the extent permitted by section 64A of Schedule 2.	18.7 The Customer shall have the right to request (by e-mail) from EPS:
7.1	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 when applicable.	14.6 If EPS is required to replace the Goods under this clause or the CCA, but is unable to do so, EPS may refund any money the Customer has paid for the Goods.	(a) a copy of the information about the Customer retained by EPS and the right to request that EPS correct any incorrect information; and
7.2	The Customer acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. EPS will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur. EPS shall not be liable for inferior existing paintwork where EPS' paint has bonded to the existing paintwork and weakened the previous paint causing any kind of flake, crack or blemish.	14.7 If the Customer is not a consumer within the meaning of the CCA, EPS' liability for any defect or damage in the Goods is:	(b) that EPS does not disclose any personal information about the Customer for the purpose of direct marketing.
7.3	Where EPS gives advice or recommendations to the Customer, or the Customer's agent, regarding the suitability of applying paint where the moisture content reading is not at a favourable level for paint adhesion, and such recommendations are not acted upon then EPS shall require the Customer or their agent to authorise commencement of the Services in writing. EPS shall not be liable in any way whatsoever for any damages or losses that occur due to poor paint adhesion as a result.	(a) limited to the value of any express warranty or warranty card provided to the Customer by EPS at EPS' sole discretion;	18.8 EPS 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.
7.4	The Customer acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. EPS will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur. EPS shall not be liable for inferior existing paintwork where EPS' paint has bonded to the existing paintwork and weakened the previous paint causing any kind of flake, crack or blemish.	(b) limited to any warranty to which EPS is entitled, if EPS did not manufacture the Goods;	18.9 The Customer can make a privacy complaint by contacting EPS via e-mail. EPS 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.
7.5	The Customer acknowledges that Goods supplied may:	(c) otherwise negated absolutely.	19. Dispute Resolution
7.6	(a) fade or change colour over time; and	14.8 Subject to this clause 14, returns will only be accepted provided that:	19.1 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:
7.7	(b) expand, contract or distort as a result of exposure to heat, cold, weather; and	(a) the Customer has complied with the provisions of clause 14.1; and	(a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
7.8	(c) mark or stain if exposed to certain substances; and	(b) EPS has agreed that the Goods are defective; and	(b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
7.9	(d) be damaged or disfigured by impact or scratching.	(c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and	20. Building and Construction Industry Payments Act 2004
8.	Accuracy of Customer's Plans and Measurements	(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.	20.1 At EPS' sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Payments Act 2004 may apply.
8.1	EPS shall be entitled to rely on any plans, specifications 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, EPS accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.	14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, EPS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:	20.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.
8.2	It shall be the Customer's responsibility to advise EPS of any changes to plans or scope of Services required. Should the Customer fail to inform EPS of any changes, then any associated costs incurred by EPS in correcting any paintwork due to out-of-date plans being supplied to EPS or additional items required shall be charged as a variance in accordance with clause 5.2.	(a) the Customer failing to properly maintain or store any Goods;	21. Service of Notices
9.	Access	(b) the Customer using the Goods for any purpose other than that for which they were designed;	21.1 Any written notice given under this contract shall be deemed to have been given and received:
9.1	The Customer shall ensure that EPS has clear and free access to the work site at all times to enable them to undertake the Services. EPS shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of EPS.	(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;	(a) by handing the notice to the other party, in person;
10.	Compliance with Laws	(d) the Customer failing to follow any instructions or guidelines provided by EPS;	(b) by leaving it at the address or the other party as stated in this contract;
10.1	The Customer and EPS 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.	(e) fair wear and tear, accident, or act of God.	(c) by sending it by registered post to the address of the other party as stated in this contract;
10.2	The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.	14.10 EPS may in its absolute discretion accept non-defective Goods for return in which case EPS may require the Customer to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.	(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;
10.3	The Customer agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.	14.11 Notwithstanding anything contained in this clause if EPS is required by a law to accept a return, then EPS will only accept a return on the conditions imposed by that law.	(e) if sent by email to the other party's last known email address.
11.	Title	15. Intellectual Property	21.2 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.
11.1	EPS and the Customer agree that ownership of the Goods shall not pass until:	15.1 Where EPS has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of EPS.	22. General
11.2	(a) the Customer has paid EPS all amounts owing to EPS; and	15.2 The Customer warrants that all designs, specifications or instructions given to EPS will not cause EPS to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify EPS against any action taken by a third party against EPS in respect of any such infringement.	22.1 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.
11.3	(b) the Customer has met all of its other obligations to EPS.	15.3 The Customer agrees that EPS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which EPS has created for the Customer.	22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which EPS has its principal place of business, and are subject to the jurisdiction of the Southport Courts in Queensland.
12.	Receipt by EPS 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. It is further agreed that:	16. Default and Consequences of Default	22.3 Subject to clause 14 EPS shall be under no liability whatsoever to the Customer for any indirect or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by EPS of these terms and conditions (alternatively EPS' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
12.1	(a) until ownership of the Goods passes to the Customer in accordance with clause 11.1 that the Customer is only a bailee of the Goods and must return the Goods to EPS on request;	16.1 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 EPS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.	22.4 EPS may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
12.2	(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for EPS and must pay to EPS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.	16.2 If the Customer owes EPS any money the Customer shall indemnify EPS from and against all costs and disbursements incurred by EPS in recovering the debt (including but not limited to interest, legal costs, legal costs on a solicitor and own client basis, EPS' contract default fee, and bank disbursement fees).	22.5 The Customer cannot licence or assign without the written approval of EPS.
12.3	(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	16.3 Without prejudice to any other remedies EPS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions EPS may suspend or terminate the supply of Goods to the Customer. EPS will not be liable to the Customer for any loss or damage the Customer suffers because EPS has exercised its rights under this clause.	22.6 EPS 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 EPS' sub-contractors without the authority of EPS.
12.4	Customer must hold the proceeds of any such act on trust for EPS and must pay or deliver the proceeds to EPS on demand.	16.4 Without prejudice to EPS' other remedies at law EPS shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to EPS shall, whether or not due for payment, become immediately payable if:	22.7 The Customer agrees that EPS may amend these terms and conditions by notifying 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 EPS to provide Goods to the Customer.
12.5	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 behalf of the Customer and must sell, dispose of or return the resulting product to EPS as it so directs.	16.5 The Customer agrees that EPS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which EPS has created for the Customer.	22.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lockout, fire, explosion, destruction, fire, flood, storm or other event beyond the reasonable control of either party.
12.6	The Customer irrevocably authorises EPS to enter any premises where EPS believes the Goods are kept and recover possession of the Goods.	16.6 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 EPS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.	22.9 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.
12.7	EPS may recover possession of any Goods in transit whether or not delivery has occurred.	16.7 If the Customer owes EPS any money the Customer shall indemnify EPS from and against all costs and disbursements incurred by EPS in recovering the debt (including but not limited to interest, legal costs, legal costs on a solicitor and own client basis, EPS' contract default fee, and bank disbursement fees).	
12.8	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 EPS.	16.8 Without prejudice to any other remedies EPS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions EPS may suspend or terminate the supply of Goods to the Customer. EPS will not be liable to the Customer for any loss or damage the Customer suffers because EPS has exercised its rights under this clause.	
12.9	EPS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.	16.9 Without prejudice to EPS' other remedies at law EPS shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to EPS shall, whether or not due for payment, become immediately payable if:	