

## Terms and Conditions

### Table of Contents

|  |   |
|--|---|
| <i>Definitions</i> .....   | 2 |
| <i>Acceptance</i> .....  | 2 |
| <i>Electronic Transactions Act 2003</i> .....  | 2 |
| <i>Specifications</i> .....  | 2 |
| <i>Authorised Representatives</i> .....  | 3 |
| <i>Change in Control</i> .....   | 3 |
| <i>Price and Payment</i> .....   | 3 |
| <i>Delivery of the Works</i> .....   | 4 |
| <i>Risk</i> .....  | 4 |
| <i>Client's Responsibilities</i> .....   | 5 |
| <i>Access</i> .....  | 5 |
| <i>Surplus Materials</i> .....   | 5 |
| <i>Contaminated and Hazardous Materials</i> .....  | 5 |
| <i>Dial Before You Dig</i> .....   | 5 |
| <i>Underground Services Locations</i> .....  | 5 |
| <i>Compliance with Laws</i> .....  | 6 |
| <i>Title</i> .....   | 6 |
| <i>Security and Charge</i> .....   | 6 |
| <i>Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</i><br>..... | 6 |
| <i>Default and Consequences of Default</i> .....   | 7 |
| <i>Cancellation</i> .....  | 7 |
| <i>Privacy Act 1988</i> .....  | 7 |
| <i>Building and Construction Industry Payments Act 2004</i> .....                        | 8 |
| <i>Dispute Resolution</i> .....  | 8 |
| <i>Service of Notices</i> .....  | 8 |
| <i>General</i> .....   | 8 |

## Definitions

1. "Contractor" means Jirgens Civil Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Jirgens Civil Pty Ltd.
2. "Client" means the person(s) ordering 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.
3. "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Contractor to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).
4. "Equipment" means any tools, plant and equipment provided by or on behalf Contractor in fulfilment of any works provided to the Client and it included any and all associated or attached tools, accessories and parts. (where the context so permits the terms 'Plant' or 'Equipment' shall be interchangeable for the other).
5. "Machine Hire" shall mean machine hire for equipment. Supplied at an hourly rate or at a fixed cost price at the rates specified in the Quotation or if no rates are specified, at the Contractor's current hourly rates.
6. "Quotation" means the quotation prepared by the Contractor providing prices of the labour, material and work to be provided by the Contractor. The prices contained in the quotation are subject to variation / adjustment as is detailed in this agreement. If there is any conflict between provisions contained in the quotation and the terms contained herein then the provisions of the quotation shall take precedence.
7. "Price" means the Price payable (plus any GST where applicable) for the Works as agreed between the Contractor and the Client in accordance with clause 5
8. "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" Cth.
9. "Contaminated / Hazardous Material" means all material deemed to be hazardous (including but not limited to asbestos, diesel, acid sulphates, petroleum, oil, lead, restricted solid waste, general solid waste or any other material deemed hazardous.). The terms "Contaminated" and "Hazardous" shall be interchangeable for the other.
10. "Underground Services" means all services and utilities located underground, including but not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telecommunications cables (including those owned by Telstra), fibre optic cables, and oil pumping mains.

## Acceptance

1. The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
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 Client and the Contractor.
3. Where the Client is a tenant (and therefore not the owner of the land and premises where the Materials are to be installed) then the Client warrants that full consent has been obtained from the owner for the Contractor to install the Materials on the owner's land and premises. The Client acknowledges and agrees that they shall be personally liable for full payment of the Price for all works provided under this agreement and to indemnify the Contractor against any claim made by the owner of the premises (howsoever arising) in relation to the installation of the Materials and the provision of any related Works by the Contractor except where such claim has arisen because of the negligence of the Contractor when installing the Materials.
4. The Client agrees that they shall upon request from the Contractor provide evidence that:
  - a) they are the owner of the land and premises upon which the Works are to be undertaken; or
  - b) where they are a tenant, that they have the consent of the owner for the Materials to be installed on the land and premises upon which the works are to be undertaken.
5. The Client acknowledges and agrees that in the event the Contractor requires access, in order to undertake the Works, to an adjoining or adjacent property or land to the nominated job site, that is not owned by the Client, then it is the Client's responsibility to gain permission from the land owner to use the above mentioned property throughout the process or delivering the Works. In the event the land owner denies access or use of the land or property, the Client shall be liable for all costs incurred by the Contractor in gaining permission to access and/or use the property through any legal process that may be deemed necessary.
6. In the event that the Contractor is required to provide the Works urgently, that may require the Contractor staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then the Contractor reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between the Contractor and the Client.
7. If the Contractor has been requested by the Client to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.

## Electronic Transactions Act 2003

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 2003 or any other applicable provisions of that Act or any Regulations referred to in that Act.

## Specifications

1. The Contractor shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Contractor accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
2. The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in the Contractor's fact sheets, price lists or advertising material, are approximate only and are given by way of identification

- only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Contractor.
3. The Client shall be responsible for ensuring that the Materials ordered are suitable for their intended use, as in some instances the Materials are made to order and the Contractor offers no refund, either partial or fully, in the event of any cancellation by the Client.
  4. The Client acknowledges and accepts that the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, the Contractor reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 2. In all such cases the Contractor will notify the Client in advance of any such substitution, and also reserves the right to place the Client's order on hold until such time as the Contractor and the Client agree to such changes.

#### Authorised Representatives

1. Unless otherwise limited as per clause 1 the Client agrees that should the Client introduce any third party to the Contractor as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any materials or Works on the Client's behalf and/or to request any variation to the works on the Client's behalf (such authority to continue until all requested works have been completed or the Client otherwise notifies the Contractor in writing that said person is no longer the Client's duly authorised representative).
2. In the event that the Client's duly authorised representative as per clause 1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise the Contractor in writing of the parameters of the limited authority granted to their representative.
3. The Client specifically acknowledges and accepts that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor profit margin) in providing any works, materials, Works or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 1 (if any)).

#### Change in Control

1. The Client shall give the Contractor 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 (including but not limited to, changes in the Client's name, address, contact phone or fax number(s), or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.

#### Price and Payment

1. At the Contractor's sole discretion, the Price shall be either:
  - a) as indicated on invoices provided by the Contractor to the Client in respect of Works performed or Materials supplied; or
  - b) the Contractor's quoted Price (subject to clause 2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days. Unless otherwise stated, quotations shall not have an allowance for:
    - unforeseen scenarios such as, but not limited to, concrete sub-based or drainage systems; or
    - additional excavation and disposal costs.

#### The Contractor reserves the right to change the Price:

- a) if a variation to the Material which is to be supplied is requested; or
  - c) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
  - d) where additional Works are required due to the discovery of hidden or unidentifiable difficulties which are beyond the Contractor's ability to accurately assess (including, but not limited to, poor weather conditions, limitations to accessing the site, sub-surface soil conditions (such as hard rock barriers such as limestone below the surface, tree stumps or iron reinforcing rods in concrete), obscured site defects, hidden services, asbestos or other contaminated material, additional site works requiring shoring, piling, piercing, propping, under-pinning, remobilising or work site, soil stabilisation (if not included in the contract), or additional engineering required to acquire building license and/or imposed by site conditions or council requirements,) remobilisation of the work site, removal of excess soils or rubble etc) which are only discovered on commencement of the Works; or
  - e) in the event of increases to the Contractor in the cost of labour or materials which are beyond the Contractor's control.
- Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Client shall be required to respond to any variation submitted by the Contractor within ten (3) working days.

At the Contractor's sole discretion, a non-refundable deposit may be required to secure a booking with the commencement date to be confirmed and that any

- a) such deposit paid will be deducted from the final invoice.
- b) the Price will be payable by the Client on the date(s) determined by the Contractor, which may be:
- c) on completion of the Works; or
- d) before the delivery of the Work; or
- e) by way of progress payments in accordance with the Contractor's specified progress payment schedule and such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered but not yet installed.

#### Generally the progress payment plan is based on:

- a) a deposit;
- b) a payment to cover all the materials costs to be paid on commencement of the Works;
- c) an interim payment of fifty percent (50%) of the remaining balance due halfway during construction where such construction is planned for more than five (5) days;
- d) balance of outstanding amount due on completion.

#### Payment terms and Payments methods

- a) Unless otherwise stated on the invoice, payment terms are strictly 14 days from invoice date.
- b) If payment in full is not made within 30 days of invoice then any amount outstanding will be subject to interest at the rate of 5% pa calculated daily from the day after the date of the invoice until the date of payment in full.**
- c) Payment may be made by cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Contractor.
- d) 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 the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- e) Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client 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.

#### Delivery of the Works

1. Subject to clause 2, it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.
  - a) The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Client to:
    - b) make a selection; or
    - c) have the site ready for the Works; or
    - d) notify the Contractor that the site is ready.
2. The Contractor may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
3. Any time specified by the Contractor for delivery of the Works is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that the Contractor is unable to supply the Works as agreed solely due to any action or inaction of the Client, then the Contractor shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
4. Where the Client requires the Works to be rescheduled, the Client is required to provide the Contractor with at least forty-eight (48) hours' notice prior to the scheduled commencement time.
5. The Contractor recommends that where additional work is to be performed by third parties after the completion of the Contractor's Works, that such scheduling allows for any delays that may affect the Contractor satisfactorily completing the Works in the proposed timeframe including, but not limited to, inclement weather, etc.
6. The price of services, excavation or removal of redundant materials to prepare the site for the work will be quoted by the Contractor as an estimate where excavation or removal is required. The final price shall be the invoice charged to the Client which may be varied or altered if the Contractor provides evidence of:
  - a) Any cost increases outside of its control,
  - b) Deficiencies in information supplied by the Client, or any delays caused by the Client or its agents where the Contractor has presented itself to do the work agreed, or where the Contractor discovers or encounters underground services as per Clause 1, not previously known and where the Client has not notified the Contractor; and
  - c) Any rock, reinforcing steel, puggy or loose soil, previously stabilised material, hazards and or contaminated material (including but not limited to asbestos, diesel, acid sulphates, petroleum, oil, lead, restricted solid waster, general solid waste or any other material deemed hazardous.)

#### Risk

1. If the Contractor retains ownership of the Materials under clause 14 then:
  - a) where the Contractor is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that Materials are delivered by the Contractor, or the Contractor's nominated carrier to the site. (even if the Client is not present at the address).
  - b) where the Contractor is to both supply and install Materials then the Contractor shall maintain valid insurance cover including Workers Compensation and Public Liability until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
2. Notwithstanding the provisions of sub clause 7.1 and 7.2, where the Contractor requires that Materials, fittings, tools and or plant required for the fulfilment of the Works be stored at the Site, the Client shall supply the Contractor a safe area for storage and shall take all reasonable efforts to protect all items from possible destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.
3. The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation thereof and that connections (including, but not limited to, pipes, couplings and valves) are of suitable capacity to handle the Materials once installed.
4. If for any reason (including the discovery of asbestos, any and all other material deemed to be hazards or unfavourable soil conditions) the Contractor, or the Contractor's employees, reasonably form the opinion that the Client's premises is not safe for the Works to proceed then the Contractor shall be entitled to delay the provision of the Works (in accordance with the provisions of clause 6 above) until the Contractor is satisfied that it is safe for the installation to proceed. The Contractor may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed but all such Works undertaken and any additional Materials supplied shall be treated as a variation in accordance with clause 5.
5. The installation of some Works can cause damage to existing infrastructure. The Client agrees to indemnify the Contractor against any such loss, damage or claim that may arise if the existing pipe work is unable to accommodate the installation of the Materials.
6. The Client acknowledges and agrees that where the Contractor has performed temporary repairs that:
  - a) the Contractor offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
  - b) the Contractor will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required.
7. The Client acknowledges that:

- 
- a) the Contractor is only responsible for Materials that are replaced by the Contractor and does not at any stage accept any liability in respect of previous works and/or materials supplied by any other third party that subsequently fail and found to be the source of the failure;
  - b) where the Client has supplied goods for the Contractor to complete the Works, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those goods; and
  - c) the Contractor shall not be liable for any loss or damage to the Works (or any part thereof) howsoever arising where sub-clauses (a) and (b)
8. The Client acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged to existing infrastructure and underground services and therefore where the Contractor is requested to merely clear such blockages, the Contractor can offer no guarantee against reoccurrence or further damage. In the event the Contractor finds any such damage, the Contractor will immediately advise the Client of the same and shall provide the Client with an estimate for the full repair of the damaged pipe work.
  9. Where the Contractor is required to install the Materials the Client warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and the Contractor 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 (including but not limited to insufficient or defective foundations, walls or other structures not erected by the Contractor).
  10. Where the Contractor gives advice or recommendations to the Client, or the Client's agent, regarding the suitability of the installation and such advice or recommendations are not acted upon then the Contractor shall not be liable in any way whatsoever for any damages or losses that occur and any warranties, resupply or defects clauses are revoked.
  11. The Client accepts that the use of loud machinery may need to be used for the completion of the Works and shall be the responsibility to inform the Contractor in advance of suitable times for the use of such machinery. These machines may also generate dust and smoke and therefore the Contractor recommends that windows and doors are kept shut whilst such machinery is in use.

#### Client's Responsibilities

1. The Client acknowledges that;
  - it is their responsibility to ensure that all Materials which the Contractor is required to install are of the correct type, size, rating, standard, quality, colour and finish, and are as specified in the specifications, drawings and plans upon which the Contractor based the quotation on and therefore, the Client agrees to indemnify the Contractor against any costs incurred by the Contractor in rectifying such errors if required.
2. It is further agreed that the Client will supply power, temporary lighting, toilet, eating and first aid facilities if required.

#### Access

1. The Client shall ensure that the Contractor has clear and free access to the work site at all times to enable them to undertake the Works. the Contractor 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 the Contractor.

#### Surplus Materials

1. Unless otherwise stated elsewhere in this contract:
  - a) only suitable new Materials will be used;
  - b) demolished materials will become the property of the Contractor's; and
  - c) Materials which the Contractor brings to the worksite which are surplus remain the property of the Contractor unless such Materials have been paid for by the Client.

#### Contaminated and Hazardous Materials

1. The Contractor is not responsible for the removal of waste (including but not limited to asbestos, contaminated soil, stockpiling of excess spoil, any other material deemed to be hazardous or unfavourable soil conditions) from site or clean-up of the building/constructions site/s. This is the responsibility of the Client. Should the contractor suspect or identify the presence of asbestos and /or any other hazardous materials on site, the Contractor will immediately contact the Client or Client's Agent to discuss the options available in order to resolve the contamination. The Contractor will stop all work until an agreement regarding remediation has been reached between Client and Contractor. The Client agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines in relation to any remediation works associated with the removal of contaminated material.

#### Dial Before You Dig

1. Location of underground services by a licensed service locator is mandatory prior to commencement of any works. "Dial Before You Dig" must be consulted and any potential underground services marked on site. Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified. If the Client requests the Contractor to engage the service locator then this shall be in addition to the Price.

#### Underground Services Locations

1. Prior to the Contractor commencing any work the Client must advise the Contractor of the precise location of all underground services on the site and clearly mark the same (including but not limited to any mains/services in wall cavities). The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
  2. Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 1.
- 

#### Compliance with Laws

1. The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
2. The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
3. The Client agrees that the site will comply with any work occupational health and safety laws health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
4. Prior to commencement of any Works the Contractor shall carry a routine soundness test of the site to ensure there are not any gas leaks in the existing pipework. In the event of such a discovery the Contractor where necessary will have the gas supply capped-off until the fault is found and repaired at the Client's expense.
5. The Client acknowledges that in instances where the gas supply is turned off at the meter or bottles by the Contractor in order to carry out the soundness test that parts within a gas appliance may fail due to not being turned off and serviced for a long period of time including, thermocouples, blocked pilot tubes, and SIT valves on pilot assemblies. Any costs associated with such an event shall be borne by the Client.
6. The Client warrants that any existing plumbing, gas fitting and/or associated services in or upon the worksite that is subject to the Materials and/or Works is in compliance with regulations. The Contractor reserves the right to halt all Works (in accordance with the provisions of clause 2 above) if in their opinion the worksite is unsafe and/or the current positioning of the unit is illegal due to not meeting the required clearances then the Client will be informed of this and will be given a revised quotation or estimate to install the new appliance in a safe and legal position. Should the Client not wish to proceed the Contractor will charge a standard fee for the time spent on worksite based on the Contractor's quotation.

#### Title

1. The Contractor and the Client agree that ownership of the Materials shall not pass until:
  - the Client has paid the Contractor all amounts owing to the Contractor; and
  - the Client has met all of its other obligations to the Contractor.
2. Receipt by the Contractor 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.
3. It is further agreed that until ownership of the Materials passes to the Client in accordance with the provision mention herein this clause above.
  - the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Contractor on request.
  - the Client holds the benefit of the Client's insurance of the Materials on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
  - the production of these terms and conditions by the Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor to make further enquiries.
  - the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand.
4. the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs.
5. unless the Materials have become fixtures the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials.
6. the Contractor may recover possession of any Materials in transit whether or not delivery has occurred.
7. the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Contractor.
8. the Contractor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

#### Security and Charge

1. In consideration of the Contractor agreeing to supply the Materials, 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).
2. The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
3. The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this **clause 16** including, but not limited to, signing any document on the Client's behalf.

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

1. The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify the Contractor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Contractor to inspect the Materials or to review the Works provided.
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).
3. The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
4. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.

5. If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.
6. If the Contractor is required to replace any Materials under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Client has paid for the Materials.
7. If the Contractor is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then the Contractor 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 and Materials which have been provided to the Client which were not defective.
8. If the Client is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Materials is:
  - a) limited to the value of any express warranty or warranty card provided to the Client by the Contractor at the Contractor's sole discretion;
  - b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Materials;
  - c) otherwise negated absolutely.
9. Subject to this clause 17, returns will only be accepted provided that:
  - a) the Client has complied with the provisions of clause 1; and
  - b) the Contractor has agreed that the Materials are defective; and
  - c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
10. Notwithstanding clauses 1 to 17.9 but subject to the CCA, the Contractor 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 any Materials;
  - b) the Client using the Materials for any purpose other than that for which they were designed;
  - c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - d) interference with the Works by the Client or any third party without the Contractor's prior approval;
  - e) the Client failing to follow any instructions or guidelines provided by the Contractor;
  - f) fair wear and tear, any accident, or act of nature.
11. In the case of second hand Materials, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Materials prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Contractor as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that the Contractor has agreed to provide the Client with the second hand Materials and calculated the Price of the second hand Materials in reliance of this clause 11.
12. Notwithstanding anything contained in this clause if the Contractor is required by a law to accept a return then the Contractor will only accept a return on the conditions imposed by that law.

#### Default and Consequences of Default

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 the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.**
2. If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's contract default fee, and bank dishonour fees).
3. Further to any other rights or remedies the Contractor may have under this contract, if a Client has made payment to the Contractor, 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 the Contractor under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
4. Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
  - a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
  - b) the Client has exceeded any applicable credit limit provided by the Contractor;
  - c) the Client becomes insolvent or bankrupt, 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 Client or any asset of the Client.

#### Cancellation

- a. Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Works to the Client. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.
- b. The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- c. In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).
- d. Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

#### Privacy Act 1988

1. The Client agrees for the Contractor 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 Client in relation to credit provided by the Contractor.
2. The Client agrees that the Contractor may exchange information about the Client with those credit providers and with related body corporates for the following purposes:

- a) to assess an application by the Client; and/or
  - b) to notify other credit providers of a default by the Client; and/or
  - 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
  - d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
3. The Client consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit.
  4. The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other agreed purposes or required by):
    - a) the provision of Works; and/or
    - b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
    - c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
    - d) enabling the collection of amounts outstanding in relation to the Works.
  5. The Contractor may give information about the Client 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 Client including credit history.
  6. The information given to the CRB may include:
    - a) personal information as outlined in 1 above;
    - b) name of the credit provider and that the Contractor is a current credit provider to the Client;
    - c) whether the credit provider is a licensee;
    - d) type of consumer credit;
    - e) details concerning the Client'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 Client no longer has any overdue accounts and the Contractor has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
    - g) information that, in the opinion of the Contractor, the Client has committed a serious credit infringement;
    - h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
  7. The Client shall have the right to request (by e-mail) from the Contractor:
    - a) a copy of the information about the Client retained by the Contractor and the right to request that the Contractor correct any incorrect information; and
    - b) that the Contractor does not disclose any personal information about the Client for the purpose of direct marketing.
  8. The Contractor will destroy personal information upon the Client'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.
  9. The Client can make a privacy complaint by contacting the Contractor via e-mail. The Contractor 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 [oaic.gov.au](http://oaic.gov.au).

#### Building and Construction Industry Payments Act 2004

1. if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Payments Act 2004 shall apply.
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.

#### Dispute Resolution

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:
  - a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
  - b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

#### Service of Notices

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.
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.

#### General

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.
2. These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia, the state in which the Contractor has its principal place of business, and are subject to the jurisdiction of the Perth Courts in that state.
3. Subject to clause 17 the Contractor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Contractor of these terms

and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).

4. Neither party to this contract may assign this contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld). The Contractor 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 the Contractor's sub-contractors without the authority of the Contractor.
5. The Client agrees that the Contractor may amend these terms and conditions by notifying 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 the Contractor to provide Works to the Client.
6. 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.
  - 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.

