Mendelssohn Construction Pty Ltd – Terms & Conditions of Trade

1. Definitions

1.1 "Contractor" means Mendelssohn Construction Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Mendelssohn Construction Pty Ltd.

1.2 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting the Contractor to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
(b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
(c) includes the Customer's executors, administrators, successors and permitted assigns.

1.3 "Works" means all Works or Materials supplied by the Contractor to the Customer at the Customer's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).

1.4 "Price" means the Price payable for the Works (plus any GST where applicable) as agreed between the Contractor and the Customer in accordance with clause 6 below.

1.5 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Works.

2.2 These terms and conditions may only be amended with both parties consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Contractor.

2.3 The Customer accepts that where required, a Safe Work Method Statement (SWMS) shall be prepared prior to commencement of any work.

3. Electronic Transactions Act

3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (New South Wales & South Australia), the Electronic Transactions Act 2001 (Australian Capital Territory), the Electronic Transactions (Victoria) Act 2000, the Electronic Transactions Act 2003 (Western Australia), the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (Tasmania) (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Errors & Omissions

4.1 The Customer acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this contract; and/or
(b) contained/omitted in/from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Works.

4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of the Contractor; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

5. Change in Control

5.1 The Customer shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by the Contractor as a result of the Customer's failure to comply with this clause.

6. Price and Payment

6.1 At the Contractor's sole discretion the Price shall be either:
(a) as indicated on invoices provided by the Contractor to the Customer in respect of Works performed or Materials supplied; or
(b) the Contractor's quoted Price (subject to clause 6.2) which shall be binding upon the Contractor provided that the Customer shall accept the Contractor's quotation in writing within thirty (30) days.

6.2 The Contractor reserves the right to change the Price:
(a) if a variation to the Materials which are to be supplied is requested; or
(b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
(c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, obscured site defects which require remedial work, health hazards and safety considerations, hidden locations (as per clause 12.1(g)) or prerequisite work by any third party not being completed, etc.) which are only discovered on commencement of the Works; or
(d) in the event of increases to the Contractor in the cost of labour or materials which are beyond the Contractor's control.
(e) 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 Customer shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

6.3 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 Customer shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

6.4 At the Contractor's sole discretion a non-refundable deposit may be required.

6.5 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by the Contractor, which may be:
(a) on completion of the Works; or
(b) before commencement of the Works; or
(c) by way of progress payments in accordance with the Contractor's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
(d) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
(e) the date specified on any invoice or other form as being the date for payment; or
(f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Contractor.

6.6 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.

6.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to five percent (5%) of the Price), or by any other method as agreed to between the Customer and the Contractor.

6.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer 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 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.

7. Delivery of the Works

7.1 Subject to clause 7.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.

7.2 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 Customer written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Customer to:
(a) make a selection; or
(b) have the site ready for the Works; or
(c) notify the Contractor that the site is ready.

7.3 At the Contractor's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

7.4 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.

7.5 Any time specified by the Contractor for provision of the Works is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Customer as a result of provision being late. However, both parties agree that they shall make every endeavour to enable the Works to be provided at the time and place as was arranged between both parties. In the event that the Contractor is unable to provide the Works as agreed solely due to any action or inaction of the Customer then the Contractor shall be entitled to charge a reasonable fee for re-providing the Works at a later time and date.

7.6 The Contractor is not insured to remove furniture or fittings and will not do so, nor are they licensed to move gas or electrical appliances. Any costs associated with such Works will be charged as a variation.

8. Risk

8.1 If the Contractor retains ownership of the Materials under clause 15 then:
(a) where the Contractor is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by the Contractor or the Contractor's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
(b) where the Contractor is to both supply and install Materials then the Contractor shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Customer.

8.2 Notwithstanding the provisions of clause 8.1 if the Customer specifically requests the Contractor to leave Materials outside the Contractor's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Customer's expense.

8.3 The Contractor may at its discretion notify the Customer that it requires to store at the site plant and tools required for the Works, in which event the Customer shall supply the Contractor a safe area for storage and shall take all reasonable efforts to protect all items so stored from possible destruction, theft or damage. In the event that any such items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Customer's responsibility.

8.4 Any advice, recommendation, information, assistance or service provided by the Contractor in relation to Works provided is given in good faith, is based on the Contractor's own knowledge and experience and shall be accepted without liability on the part of the Contractor and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Works.

8.5 The Customer acknowledges that, whilst the Contractor shall make all endeavours to remove from the site all rubbish, excavated material, vegetation, demolished or dismantled structures, the Contractor shall not be held liable for any small amounts of rubbish, and the like, remaining at the site.

8.6 Where the Customer has supplied materials for the Contractor to complete the Works, the Customer acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. The Contractor shall not be responsible for any defects in the Works, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Customer.

8.7 The Customer acknowledges that Materials supplied may:
(a) fade or change colour over time; and
(b) expand, contract or distort as a result of exposure to heat, cold, weather; and
(c) mark or stain if exposed to certain substances; and
(d) be damaged or disfigured by impact or scratching.

9. Timber Risk

9.1 Timber is a natural product and as such may exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst the Contractor will make every effort to match sales samples to the finished Materials the Contractor accepts no liability whatsoever where such samples differ to the finished Materials supplied.

9.2 Timber is a hydroscopic material subject to expansion and contraction, therefore the Contractor will accept no responsibility for gaps that may appear during prolonged dry periods.

10. Concrete Risk

10.1 The Customer acknowledges that variations of colour and texture are inherent in concrete. The Contractor shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture between different batches of product.

10.2 Detailed drawings of any services that will be embedded in the concrete are to be provided to the Contractor prior to commencement of any Works. Whilst all due care will be taken no liability will be accepted by the Contractor for damage to the services or any other element embedded in the concrete.

10.3 The Contractor gives no guarantee (expressed or implied) as to the length of time the curing process will take and/or against cracking of concrete that may occur naturally in the Works such as:
(a) hairline cracking of paving and grout; or
(b) damage caused by contact with chemicals, solvents, oils or any other substances; or
(c) the affects by elements such as heat exposure or wet weather conditions that prolong the curing process.

10.4 The Customer acknowledges and agrees that it is their responsibility to organise and be liable for all costs associated with protecting the concrete and shall take all reasonable precautions to protect against destruction or damage by way of vandalism. In the event that the concrete is destroyed or damaged due to vandalism then the cost of repair or replacement shall be borne by the Customer.

10.5 The Contractor shall not be liable for any defect in the Works if the Customer does not follow the Contractor's recommendations, including:
(a) to water the concrete periodically to limit the risk of possible cracking due to weather conditions;
(b) that no foot traffic and/or any vehicles on the concrete for a minimum of forty-eight (48) hours but preferably seven (7) days;
(c) that no heavy furniture is to be placed on the concrete area for a minimum of twenty-four (24) hours.

10.6 Where the Contractor gives advice or recommendations to the Customer, or the Customer's agent, regarding the suitability of the worksite for the laying of concrete slabs, foundations or similar Works and such advice or recommendations are not acted upon then the Contractor shall require the Customer or their agent to authorise commencement of the Works in writing. The Contractor shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.

10.7 The Customer shall supply an area suitable for washing out the Contractor's equipment and for depositing all unused concrete and slurry.

11. Measurement of Concreting Works

11.1 At the completion of the Works the Customer or the representative of the Customer shall be in attendance and the Works shall then be duly measured. In the absence of either the Customer or their representative the Contractor shall carry out the necessary measurements and forward to the Customer their calculations. If the Customer does not object to the calculations within seven (7) days of receipt of the same then it shall be deemed acceptance of the same and the Works completed.

12. Customer's Responsibilities

12.1 It shall be the Customer's responsibility to:
(a) make the premises available on the agreed date and time. If installation is interrupted by the failure of the Customer to adhere to the installation schedule agreed to between the Contractor and the Customer, any additional costs will be invoiced to the Customer as an extra;
(b) 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, concreted or paved or grassed areas and gardens or landscaping) unless due to the negligence of the Contractor;
(c) remove all fragile items such as glassware, crockery, pot plants, furniture and ornaments. Breakages and damages are the responsibility of the Customer. All care taken but no responsibility accepted by the Contractor in this regard;
(d) ensure all gas and electricity are cancelled and disconnected (from the main supply at the street);
(e) ensure a safety fence is erected around the perimeter of the site to ensure public safety;
(f) provide the Contractor access to site amenities, water, power and free parking for the Contractor's vehicles; and
(g) advise the Contractor of the precise location of all known services, and asbestos and/or or hazardous materials (and that these are clearly marked) on site. The mains and services the Customer 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. Whilst the Contractor will take all care to avoid damage to any services the Customer 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 by the Customer.
(h) allocate an area for the accumulation and removal of any rubbish created from the provision of the Works by the Contractor, and the cost of such rubbish disposal containers and/or rubbish removal services shall be incurred by the Customer.

13. Accuracy of Customer's Plans & Measurements

13.1 The Contractor shall be entitled to rely on the accuracy of 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, the Contractor accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

14. Compliance with Laws

14.1 The Customer 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 occupational or work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation, particularly those in relation to asbestos and/or other hazardous materials (and the safe removal and disposal of the same). The Customer agrees to indemnify the Contractor against all claims arising from health issues related to exposure to asbestos at the site.

14.2 The Customer shall:
(a) be liable for any costs incurred by the Contractor due to the Customer's failure to comply with clause 14.1; and
(b) obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.

15. Title

15.1 The Contractor and the Customer agree that ownership of the Materials shall not pass until:
(a) the Customer has paid the Contractor all amounts owing to the Contractor; and
(b) the Customer has met all of its other obligations to the Contractor.

15.2 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.

15.3 It is further agreed that:
(a) until ownership of the Materials passes to the Customer in accordance with clause 15.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Contractor on request.
(b) the Customer holds the benefit of the Customer'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.
(c) 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.
(d) the Customer 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 Customer sells, disposes or parts with possession of the Materials then the Customer 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.
(e) the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs.
(f) unless the Materials have become fixtures the Customer irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials.
(g) the Contractor may recover possession of any Materials in transit whether or not delivery has occurred.
(h) the Customer 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.
(i) the Contractor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

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

16.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

16.2 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 Materials and/or collateral (account) – being a monetary obligation of the Customer to the Contractor for Works – that have previously been supplied and that will be supplied in the future by the Contractor to the Customer.

16.3 The Customer undertakes to:
(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor 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 16.3(a)(i) or 16.3(a)(ii);
(b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;
(c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;
(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of the Contractor; and
(e) immediately advise the Contractor of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.

16.4 The Contractor and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

16.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

16.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

16.7 Unless otherwise agreed to in writing by the Contractor, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

16.8 The Customer shall unconditionally ratify any actions taken by the Contractor under clauses 16.2 to 16.5.

16.9 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.

17. Security and Charge

17.1 In consideration of the Contractor agreeing to supply the Materials, 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).

17.2 The Customer 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.

17.3 The Customer irrevocably appoints the Contractor and each director of the Contractor as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Customer's behalf.

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

18.1 The Customer 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 Customer 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 Customer must allow the Contractor to inspect the Materials or to review the Works provided.

18.2 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**).

18.3 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

18.4 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.

18.5 If the Customer 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.

18.6 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 Customer has paid for the Materials.

18.7 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 Customer 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 Customer which were not defective.

18.8 If the Customer 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 Customer 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.

18.9 Subject to this clause 18, returns will only be accepted provided that:
(a) the Customer has complied with the provisions of clause 18.1; and
(b) the Contractor has agreed that the Materials are defective; and
(c) the Materials are returned within a reasonable time at the Customer'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.

18.10 Notwithstanding clauses 18.1 to 18.9 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 Customer failing to properly maintain or store any Materials;
(b) the Customer using the Materials for any purpose other than that for which they were designed;
(c) the Customer 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 Customer or any third party without the Contractor's prior approval;
(e) the Customer failing to follow any instructions or guidelines provided by the Contractor;
(f) fair wear and tear, any accident, or act of God.

18.11 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.

19. Intellectual Property

19.1 Where the Contractor has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Contractor, and shall only be used by the Customer at the Contractor's discretion.

19.2 The Customer warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.

19.3 The Customer agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, photographic or digital images, plans or products which the Contractor has created for the Customer.

20. Default and Consequences of Default

20.1 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.

20.2 If the Customer owes the Contractor any money the Customer 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).

20.3 Further to any other rights or remedies the Contractor may have under this contract, if a Customer has made payment to the Contractor by credit card, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.

20.4 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 Customer 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 Customer will be unable to make a payment when it falls due;
(b) the Customer has exceeded any applicable credit limit provided by the Contractor;
(c) the Customer 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 Customer or any asset of the Customer.

21. Cancellation

21.1 Without prejudice to any other remedies the Contractor may have, if at any time the Customer 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 Customer. The Contractor will not be liable to the Customer for any loss or damage the Customer suffers because the Contractor has exercised its rights under this clause.

21.2 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 Customer. On giving such notice the Contractor shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.

21.3 In the event that the Customer cancels the delivery of Works the Customer 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).

21.4 Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

22. Privacy Act 1988

22.1 The Customer 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 Customer in relation to credit provided by the Contractor.

22.2 The Customer agrees that the Contractor may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
(a) to assess an application by the Customer; and/or
(b) to notify other credit providers of a default by the Customer; and/or
(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.

22.3 The Customer consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit.

22.4 The Customer 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 Customer'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 Customer; and/or
(d) enabling the collection of amounts outstanding in relation to the Works.

22.5 The Contractor may give information about the Customer to a CRB for the following purposes:
(a) to obtain a consumer credit report;
(b) allow the CRB to create or maintain a credit information file about the Customer including credit history.

22.6 The information given to the CRB may include:
(a) personal information as outlined in 22.1 above;
(b) name of the credit provider and that the Contractor is a current credit provider to the Customer;
(c) whether the credit provider is a licensee;
(d) type of consumer credit;
(e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and 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 Customer has committed a serious credit infringement;
(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars ($150).

22.7 The Customer shall have the right to request (by e-mail) from the Contractor:
(a) a copy of the information about the Customer 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 Customer for the purpose of direct marketing.

22.8 The Contractor 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.

22.9 The Customer 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 Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

23. Dispute Resolution

23.1 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.

24. Other Applicable Legislation

24.1 At the Contractor's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Construction Contracts Act 2004 (Western Australia), Building and Construction Industry Payments Act 2004 (Queensland), Construction Contracts (Security of Payments) Act (Northern Territory of Australia), Building and Construction Industry Security of Payments Act 2009 (Tasmania), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) may apply.

24.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 24.1 (each as applicable), except to the extent permitted by the Act where applicable.

25. General

25.1 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.

25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the State or Territory (where applicable) and are subject to the jurisdiction of the courts in Tasmania.

25.3 Subject to clause 18, the Contractor shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by 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 Materials).

25.4 The Contractor may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.

25.5 The Customer cannot licence or assign without the written approval of the Contractor.

25.6 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 Customer 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.

25.7 The Customer agrees that the Contractor 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 the Contractor to provide Mterials to the Customer.

25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

25.9 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.

PLEASE NOTE: a larger print version of the Terms and Conditions from the Contractor on request.

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