

Mendelsohn Construction Pty Ltd – Terms & Conditions of Trade

<p>1. Definitions</p> <p>"Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.</p> <p>"Contractor" means Mendelsohn Construction Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Mendelsohn Construction Pty Ltd.</p> <p>"Customer" means the person(s), entities or any person acting on behalf of and with the authority of the Customer requesting the Contractor to provide the Works as specified in the proposal, quotation, order, invoice or other documentation, and:</p> <p>(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and</p> <p>(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and</p> <p>(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and</p> <p>(d) includes the Customer's executors, administrators, successors and permitted assigns.</p>	<p>(a) if a variation to the Materials which are to be supplied is requested; or</p> <p>(b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or</p> <p>(c) if a variation to the Works is requested as a result of hidden or unidentifiable difficulties (including, but not limited to, limitations in accessing the worksite, inclement weather, obscured latent defects which require remedial work, health hazards and safety considerations (such as the discovery of asbestos or other toxic substances), presence of water, or other conditions which are not substantial) or at all, availability of machinery including crane, hoist or other lifting equipment, change of design, latent soil conditions, hard rock or other barriers below the surface, iron reinforcing rods in concrete, hidden pipes and wiring in walls or hidden underground services, etc which are only discovered on commencement of the Works; or</p> <p>(d) in the event of increases to the Contractor in the cost of labour or Materials which are beyond the Contractor's control.</p>	<p>any claims, demands, losses, damages, costs and expenses whatsoever caused or arising in connection with the installation and work incidental thereto.</p> <p>The Customer acknowledges and accepts that:</p> <p>(a) the Contractor is not responsible for any such as 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; and</p> <p>(b) Materials supplied may:</p> <p>(i) fade or change colour over time; and</p> <p>(ii) expand, contract or distort as a result of exposure to heat, cold, weather; and</p> <p>(iii) mark or stain if exposed to certain substances; and</p> <p>(iv) be damaged or disfigured by impact or scratching.</p> <p>Timber is a hygroscopic material subject to expansion and contraction; therefore, the Contractor will accept no responsibility for swelling of timber due to excessive moisture or for gaps that may appear during prolonged dry periods.</p>	<p>The Contractor is not insured to remove furniture or fittings and will not do so, nor is the Contractor licensed to move gas or electrical appliances.</p> <p>It is the intention of the Contractor and agreed by the Customer that it is the responsibility of the Customer to provide and have erected scaffolding to enable the Works to be undertaken (where in the Contractor's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe use and that the Contractor shall hold a current certificate of competency and/or be fully licensed.</p> <p>The Contractor may at its discretion notify the Customer that it requires to store at the worksite 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 steps to protect all items 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. Any costs associated with such Works will be charged as a variation.</p> <p>The Customer shall supply an area suitable for washing out the Contractor's equipment and for depositing all unused concrete and slurry.</p>
<p>1.4 "Works" means all Works (including consultation, manufacturing and/or installation services) 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).</p> <p>1.5 "Intended Use" means a building product and the use thereof, for which the building product is intended to be, or is reasonably likely to be, associated with a building.</p> <p>1.6 "Non-Conforming Building Product" means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:</p> <p>(a) the product is not, or will not be, safe; or</p> <p>(b) does not, or will not, comply with the relevant regulatory provisions; or</p> <p>(c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.</p>	<p>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.</p> <p>At the Contractor's sole discretion a non-refundable deposit may be required.</p> <p>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:</p> <p>(a) on completion of the Works; or</p> <p>(b) 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 worksite but not yet installed; or</p> <p>(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 worksite but not yet installed; or</p> <p>(d) 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 worksite but not yet installed; or</p> <p>(e) the date specified on any invoice or other form as being the date for payment; or</p> <p>(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.</p>	<p>(a) on completion of the Works; or</p> <p>(b) by way of progress payments in accordance with the Contractor's specified progress payment schedule. 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Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the worksite but not yet installed; or</p> <p>(e) the date specified on any invoice or other form as being the date for payment; or</p> <p>(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.</p> <p>Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Contractor.</p> <p>The Contractor may, in its discretion allocate any payment received from the Customer towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Contractor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Contractor, payment will be deemed to be allocated in the order of the Contractor's maximum value of the Contractor's Purchase Money Security Interest (as defined in the PFSA) in the Materials.</p> <p>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 of that invoice is in dispute. The Price. 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 contract for the sale of the Materials. The Customer must pay GST, with reduced input tax credits, on any payments, at the same time and on the same basis as the Customer pays GST. 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.</p>	<p>The Contractor shall not be liable for any loss, damages or costs however arising resulting from any variation of the colour or texture between different batches of product.</p> <p>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.</p> <p>The Contractor gives no guarantee (expressed or implied) as to the length of time the curing process will take and/or the amount of shrinkage of concrete that may occur naturally in the Works such as:</p> <p>(a) hairline cracking of paving and grout; or</p> <p>(b) damage caused by contact with chemicals, solvents, oils or any other substances; or</p> <p>(c) the effects by elements such as heat exposure or wet weather conditions on the curing process.</p> <p>The Customer acknowledges and agrees that it is the Customer's 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.</p> <p>The Contractor shall not be liable for any defect in the Works if the Customer does not follow the Contractor's recommendations, including:</p> <p>(a) to water the concrete periodically to limit the risk of possible cracking due to weather conditions;</p> <p>(b) that no foot traffic or any vehicles on the concrete for a minimum of forty-eight (48) hours but preferably seven (7) days;</p> <p>(c) that no heavy furniture is to be placed on the concrete area for a minimum of twenty-four (24) hours.</p>
<p>1.7 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form, including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact details (email, mobile, fax, home, business, medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.</p> <p>1.8 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable/disable the Cookies first by selecting the option to enable/disable provided on the website, prior to ordering Works via the website.</p> <p>1.9 "Price" means the Price payable (plus any GST where applicable) for the Works as agreed between the Contractor and the Customer in accordance with clause 5 below.</p> <p>1.10 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Gst).</p>	<p>At the Contractor's sole discretion a non-refundable deposit may be required.</p> <p>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:</p> <p>(a) on completion of the Works; or</p> <p>(b) 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 worksite but not yet installed; or</p> <p>(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 worksite but not yet installed; or</p> <p>(d) 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 worksite but not yet installed; or</p> <p>(e) the date specified on any invoice or other form as being the date for payment; or</p> <p>(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.</p> <p>Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Contractor.</p> <p>The Contractor may, in its discretion allocate any payment received from the Customer towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Contractor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Contractor, payment will be deemed to be allocated in the order of the Contractor's maximum value of the Contractor's Purchase Money Security Interest (as defined in the PFSA) in the Materials.</p> <p>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 of that invoice is in dispute. The Price. 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 contract for the sale of the Materials. The Customer must pay GST, with reduced input tax credits, on any payments, at the same time and on the same basis as the Customer pays GST. 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.</p>	<p>(a) on completion of the Works; or</p> <p>(b) 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 worksite but not yet installed; or</p> <p>(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 worksite but not yet installed; or</p> <p>(d) by way of progress payments in accordance with the Contractor's specified progress payment schedule. 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In the absence of any payment allocation by the Contractor, payment will be deemed to be allocated in the order of the Contractor's maximum value of the Contractor's Purchase Money Security Interest (as defined in the PFSA) in the Materials.</p> <p>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 of that invoice is in dispute. The Price. 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 contract for the sale of the Materials. The Customer must pay GST, with reduced input tax credits, on any payments, at the same time and on the same basis as the Customer pays GST. 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.</p>	<p>11.1 Prior to the Contractor commencing any Works, the Customer must advise the Contractor of the precise location of all known Asbestos/Hazardous Materials on the worksite and clearly mark the same.</p> <p>11.2 In the event that the Contractor discovers additional Asbestos/Hazardous Materials whilst undertaking any Works the Contractor shall immediately advise the Customer of the same and shall be entitled to suspend the Works pending a risk assessment in relation to those materials. The Customer shall be liable for all costs incurred by the Contractor (howsoever arising) as a result of the discovery of Asbestos/Hazardous materials and/or any suspension of Works in relation thereto.</p> <p>12. Materials, Documents and Works Supplied by the Contractor:</p> <p>(a) warrants that any documentation supplied for the Works and the content of methods therein are accurate and/or suitable to be used for the purpose for which the documents were created;</p> <p>(b) agrees that it is reasonable for the Contractor to rely on the documentation;</p> <p>(c) agrees to supply the Contractor with as many copies of the documentation as the Contractor may reasonably need to perform the Works or to obtain any necessary approvals required for the Works.</p> <p>The Customer agrees that all materials and works supplied by the Customer or the Customer's third-party sub-contractors will:</p> <p>(a) be performed or supplied in accordance with all legislative requirements (including, but not limited to and Work Health and Safety (WHS) laws etc.);</p> <p>(b) be suitable for their inclusion into the Works;</p> <p>(c) be compliant with the Contractor's requirements.</p> <p>The Contractor may, where the Contractor believes that any materials or works supplied by the Customer or any third party employed by the Customer are defective, require that the defective materials be replaced or require such works as are considered defective to be removed, repaired or replaced, the costs of which shall be borne by the Customer. Notwithstanding clause 12.3 the Contractor shall have no liability whatsoever in terms of the performance of, or suitability of, any materials or works supplied by either the Customer or any third party employee of the Customer.</p> <p>In the event that the Customer undertakes or employs any third party employee for any works at the worksite, the Contractor is undertaking Works then the Customer must ensure that the Customer and/or any third party so employed:</p> <p>(a) is appropriately licensed for the works being undertaken, and will provide evidence of the same upon request by the Contractor;</p> <p>(b) does not interfere with the progress of Works by the Contractor;</p> <p>(c) holds all relevant insurances as the Contractor is required to hold or as are otherwise required under this Contract;</p> <p>(d) co-operates with all requests or directives of the Contractor in relation to the timeliness and co-ordination of works to be performed;</p> <p>(e) co-operates as may be reasonably expected with all other persons on the worksite;</p> <p>(f) discusses any worksite issues directly with the Contractor and not with any of the Contractor's employees.</p> <p>In the event that the Customer or the Customer's third party employees do not comply with clauses 12.3 or 12.5 then the Contractor may, without liability to the Contractor, remove, leave and/or stay off the worksite as the Contractor may so direct.</p> <p>If the Customer breaches this clause then the Contractor may (at the Contractor's sole discretion) either:</p> <p>(a) carry on the Works without incorporation of any Customer supplied materials or works;</p> <p>(b) suspend the carrying out of the Works as per clause 6.2;</p> <p>(c) terminate this Contract in accordance with clause 24.</p>
<p>2. Acceptance</p> <p>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.</p> <p>2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.</p> <p>2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.</p> <p>2.4 Where the Contractor gives any advice, recommendation, information, assistance or service provided by the Contractor in relation to Materials or Works supplied is given in good faith to the Customer, or the Customer's agent and is based on the Contractor's own knowledge and experience and shall be accepted without liability by the Contractor where 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.</p> <p>2.5 The Customer acknowledges that the supply of Works on credit shall not take effect until the Customer has completed a credit application with the Contractor and it has been approved with a credit limit established for the account.</p> <p>2.6 In the event that the supply of Works request exceeds the Customer's credit limit and the account exceeds the payment terms, the Contractor reserves the right to refuse delivery.</p> <p>2.7 The Customer accepts that where required, a Safe Work Method Statement (SWMS) shall be prepared prior to commencement of the Works.</p> <p>2.8 Electronic signatures are 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), the Electronic Transactions Act 2001 (Australian Capital Territory), the Electronic Transactions (Victoria) Act 2000, the Electronic Transactions (Northern Territory) Act 2000, the Electronic Communications Act 2000 (South Australia), the Electronic Transactions Act 2011 (Western Australia), 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.</p>	<p>3. Errors and Omissions</p> <p>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):</p> <p>(a) resulting from an inadvertent mistake made by the Contractor in the information and/or administration of this Contract; and/or</p> <p>(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Works.</p> <p>3.2 In the event such an error and/or omission occurs in accordance with 3.1, and is not attributable to the negligence and/or willful misconduct of the Contractor, the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.</p>	<p>3. Provision of the Works</p> <p>Subject to clause 6.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.</p> <p>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:</p> <p>(a) make a selection; or</p> <p>(b) have the worksite ready for the Works; or</p> <p>(c) notify the Contractor that the worksite is ready.</p> <p>If the Contractor's sole discretion, the delay in delivery is either included in the Price or is in addition to the Price.</p> <p>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.</p> <p>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 Customer 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 an action inaction of the Customer 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.</p> <p>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 and the risks associated with such Works will be charged as a variation.</p>	<p>12.4 Where the Contractor gives advice or recommendations to the Customer, the Contractor is not responsible for 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 be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.</p> <p>Dimensions, Plans and Specifications</p> <p>All customary industry tolerances shall apply to the dimensions and tolerances of the Materials, unless the Contractor and the Customer agree otherwise in writing. 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.</p> <p>If the giving of a quotation for the supply of Materials involves the Contractor's estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of the Contractor's estimating measurements and quantities, before the Customer places an order, or accepts such quotation.</p> <p>Should the Customer require any changes to the Contractor's estimated measurements and quantities, the Customer shall request such changes in writing before placing an order, or accepting the quotation.</p>
<p>4. Change in Control</p> <p>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, 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.</p>	<p>5. Price and Payment</p> <p>At the Contractor's sole discretion the Price shall be either:</p> <p>(a) as indicated on invoices provided by the Contractor to the Customer in respect of Works performed or Materials supplied; or</p> <p>(b) the Contractor's quoted Price (subject to clause 5.2) which shall be binding upon the Contractor provided that the Customer shall accept the Contractor's quotation in writing within thirty (30) days.</p> <p>The Contractor reserves the right to change the Price:</p>	<p>Measurement of Concrete Works</p> <p>All the completion of the concrete being laid, the Customer or the representative of the Customer shall be in attendance and the work 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 made within forty-eight (48) hours of the concrete being measured, then the calculations shall be deemed to be accurate.</p> <p>Customer's Responsibilities</p> <p>It is the Customer's responsibility to:</p> <p>(a) have all areas clean and clear to enable scheduled work to be completed in accordance with the schedule of installation; and</p> <p>(b) 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;</p> <p>(c) remove all fragile items such as glassware, crockery, pots, plants, furniture and ornaments. Breakages and damages will be the responsibility of the Customer. All care taken but no responsibility accepted by the Contractor in this regard;</p> <p>(d) provide adequate dust sheets to protect the Customer's furniture and décor. The Contractor will not accept any responsibility for cleaning or repair costs attributed to dust caused by any sanding process;</p> <p>(e) ensure all gas and electrical appliances are cancelled and disconnected (from the main supply at the street);</p> <p>(f) ensure a safety fence is erected around the perimeter of the worksite to ensure public safety;</p> <p>(g) investigate local laws in relation to the pruning and/or removal of trees, and where necessary obtain (at the expense of the Customer) all permits, licenses and approvals that may be required for the Works. Temporary fences may need to be erected around the circumference of the tree, and if so, the Customer shall arrange the erection in conjunction with the Contractor; and</p> <p>(h) allocate an area for the accumulation and removal of any rubbish created by the Contractor, and the cost of such rubbish disposal containers and/or rubbish removal services shall be incurred by the Customer; and</p> <p>(i) provide the Contractor access to worksite amenities, water, power and fire parking for the Contractor's vehicles.</p> <p>Notwithstanding clause 10.1(g) the Customer acknowledges and agrees to advise the Contractor prior to commencement of any Works where the removal of any trees may be subject to a protection order and/or on a heritage list and warrants to ensure that the Contractor's Works will comply with the applicable laws, restrictions, or 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</p>	<p>12.5 All customary industry tolerances shall apply to the dimensions and tolerances of the Materials, unless the Contractor and the Customer agree otherwise in writing. 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.</p> <p>If the giving of a quotation for the supply of Materials involves the Contractor's estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of the Contractor's estimating measurements and quantities, before the Customer places an order, or accepts such quotation.</p> <p>Should the Customer require any changes to the Contractor's estimated measurements and quantities, the Customer shall request such changes in writing before placing an order, or accepting the quotation.</p> <p>13. Worksite Access and Condition</p> <p>The Customer is solely responsible for providing immediate, free, clear, and safe access to the worksite, and to:</p> <p>(a) obtain any permits or licences to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by the Contractor; and</p> <p>(b) that there are no height restrictions likely to be imposed by overhead power lines or any other obstruction) at all times to enable them to undertake the Works; and</p> <p>(c) ensure the Contractor is able to provide for any damage to the worksite (including, without limitation, damage to roads, access routes to the property, pathways, driveways and concrete or paved or grassed areas), unless due to the negligence of the Contractor; and</p> <p>(d) the Customer agrees to indemnify the Contractor against all costs incurred by the Contractor in recovering such vehicles in the event they become bogged or otherwise immovable.</p> <p>Underground Locations</p> <p>Prior to the Contractor commencing any work the Customer must advise the Contractor of the precise location of all underground services on the worksite and clearly mark the same. The underground mains & 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, electrical cables, oil pipes, water mains, and any other services that may be on worksite.</p> <p>Whilst the Contractor will take all care to avoid underground 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 as per clause 14.1.</p> <p>Surplus Materials</p> <p>Unless otherwise stated elsewhere in this contract:</p> <p>(a) only suitable new Materials will be used; and</p> <p>(b) demolished materials remain the Customer's property; and</p> <p>(c) Materials that the Contractor brings to the worksite which are surplus remain the property of the Contractor.</p> <p>Compliance with Laws</p> <p>The Customer and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of the applicable 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</p>

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<p>20.2 The same). The Customer agrees to indemnify the Contractor against all claims arising from health issues related to exposure to asbestos at the worksite.</p> <p>20.3 Where the Customer has supplied materials for the Contractor to complete the Works, the Customer acknowledges that it accepts responsibility for the suitability of purpose, quality and any faults inherent in those materials. However, if in the Contractor's opinion, it is believed that the materials supplied will not conform to industry regulations, then the Contractor shall be entitled, without prejudice, to halt the Works until the appropriate conforming materials are sourced and all costs associated with such a change to the plans will be invoiced in accordance with clause 5.2.</p> <p>21. The Contractor shall:</p> <p>(a) be liable for any costs incurred by the Contractor due to the Customer's failure to comply with clause 16.1; and</p> <p>(b) obtain (at the expense of the Contractor) all licenses and approvals that may be required for the Works.</p> <p>21.4 The Contractor shall advise the Contractor of the precise location of all known risks present on the worksite, and where applicable, induct the Contractor's workers (including any sub-contractors as required), on:</p> <p>(a) any work, health and safety management system;</p> <p>(b) site property safety expectations;</p> <p>(c) emergency provisions;</p> <p>(d) risks and their control measures; and</p> <p>(e) incident reporting expectations.</p> <p>21.5 Insurance</p> <p>21.6 The Contractor shall have public liability insurance of at least five million dollars (\$5m). It is the Customer's responsibility to ensure that they are similarly insured.</p> <p>21.7 Title</p> <p>21.8 The Contractor and the Customer agree that ownership of the Materials shall be deemed to be transferred to the Contractor:</p> <p>(a) the Customer has paid the Contractor all amounts owing to the Contractor; and</p> <p>(b) the Customer has met all of its other obligations to the Contractor.</p> <p>21.9 Receipt by the Contractor of any form of payment other than cash shall be deemed to be payment and that form of payment has been honoured, cleared or recognised.</p> <p>21.10 It is further agreed that until ownership of the Materials passes to the Contractor in accordance with clause 18.1:</p> <p>(a) 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;</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(g) the Contractor may recover possession of any Materials in transit whether or not delivery has occurred;</p> <p>(h) the Customer shall not charge or grant an encumbrance on the Materials or grant nor otherwise give away any interest in the Materials while they remain the property of the Contractor;</p> <p>(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.</p> <p>21.11 Personal Property Securities Act 2009 ("PPSA")</p> <p>21.12 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.</p> <p>21.13 Upon assenting to these terms and conditions in writing the Customer authorises the Contractor to enter into the 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.</p> <p>21.14 The Customer undertakes to:</p> <p>(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;</p> <p>(i) register a financing statement on the financing change or statement of related security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 19.3(a)(i) or 19.3(a)(ii).</p> <p>(b) indemnify and 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;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;</p> <p>(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;</p> <p>(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.</p> <p>21.15 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.</p> <p>21.16 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.</p> <p>21.17 The Customer waives its rights as a grantor and/or a debtor under sections 42 and 43 of the PPSA.</p> <p>21.18 Unless otherwise agreed in writing by the Contractor, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>21.19 The Customer shall unconditionally ratify any actions taken by the Contractor under clauses 19.3 to 19.5.</p> <p>21.20 Subject to any express provisions to the contrary (including those contained in this clause 19), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>21.21 Security and Charge</p> <p>21.22 In consideration of the Contractor agreeing to supply the Materials, the Customer agrees to grant to the Contractor an 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).</p>	<p>21.23 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.</p> <p>21.24 Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</p> <p>21.25 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 Contractor will notify the 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.</p> <p>21.26 Under applicable State, Territory and Commonwealth Law (including, without limitation, the CCA), certain statutory implied warranties and guarantees (including, without limitation, the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).</p> <p>21.27 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>21.28 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 the Non-Excluded Guarantees is limited to the fullest extent permitted by law.</p> <p>21.29 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.</p> <p>21.30 If the Contractor is required to replace any Materials under this clause and it is unable to do so, the Contractor may refund any money the Customer has paid for the Materials.</p> <p>21.31 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.</p> <p>21.32 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:</p> <p>(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;</p> <p>(b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Materials;</p> <p>(c) otherwise negated absolutely.</p> <p>21.33 Subject to this clause 21, returns will only be accepted provided that:</p> <p>(a) the Customer has complied with the provisions of clause 21.1; and</p> <p>(b) the Contractor has agreed that the Materials are defective; and</p> <p>(c) the Materials are returned within a reasonable time at the Customer's cost (if that cost is not significant); and</p> <p>(d) the Materials are returned in as close a condition to that in which they were delivered as is possible.</p> <p>21.34 Notwithstanding clauses 21.1 to 21.9 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:</p> <p>(a) the Customer failing to properly maintain or store any Materials;</p> <p>(b) the Customer using the Materials for any purpose other than that for which they were designed;</p> <p>(c) the Customer continuing to use any Materials after any defect has become apparent to a reasonably prudent operator or user;</p> <p>(d) interference with the Works by the Customer or any third party without the Contractor's prior approval;</p> <p>(e) the Customer failing to follow any instructions or guidelines provided by the Contractor;</p> <p>(f) fire, wear and tear, any accident or act of God.</p> <p>21.35 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.</p> <p>21.36 Intellectual Property</p> <p>21.37 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. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.</p> <p>21.38 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.</p> <p>21.39 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, plans or products which the Contractor has created for the Customer.</p> <p>21.40 Default and Consequences of Default</p> <p>21.41 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 such interest shall be compounded monthly at such a rate) after as well as before any judgment.</p> <p>21.42 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 interest, administration fees, legal costs on a solicitor and own client basis, the Contractor's contract default fee, and bank dishonour fees).</p> <p>21.43 Further to any other rights or remedies the Contractor may have under this Contract, if a Customer has made payment to the Contractor, the Contractor, 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 23 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.</p> <p>21.44 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:</p> <p>(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;</p> <p>(b) the Customer has exceeded any applicable credit limit provided by the Contractor;</p> <p>(c) the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with its creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p>	<p>21.45 Cancellation</p> <p>21.46 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.</p> <p>21.47 The Contractor may cancel any contract to which these terms and conditions apply or cancel the 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.</p> <p>21.48 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).</p> <p>21.49 Cancellation of orders for products made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>21.50 Privacy Policy</p> <p>21.51 All emails, documents, images or other recorded information held or used by the Contractor is Personal Information, as defined and referred to in clause 25.3, and therefore considered Confidential Information. The Contractor acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 (the Act), including Part III of the Act (being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws").</p> <p>21.52 The Contractor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Contractor that may result in serious harm to the Customer, the Contractor will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.</p> <p>21.53 Notwithstanding clause 25.1, privacy limitations will extend to the Contractor in respect of Cookies where transactions for purchases/orders transpire directly from the Contractor's website. The Contractor agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:</p> <p>(a) IP address, browser, email client type and other similar details;</p> <p>(b) tracking website usage and traffic; and</p> <p>(c) reports available to the Contractor when the Contractor sends an email to the Customer, so the Contractor may collect and review that information ("collectively Personal Information").</p> <p>21.54 In order to enable / disable the collection of Personal Information by way of cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the Contractor's website.</p> <p>21.55 The Customer agrees for the Contractor to obtain from a credit reporting body (CRB) a credit report containing personal credit information, such as the Customer's occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by the Contractor.</p> <p>21.56 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:</p> <p>(a) to assess an application by the Customer; and/or</p> <p>(b) to notify other credit providers of a default by the Customer; and/or</p> <p>(c) to exchange information with other credit providers as to the status of the credit account, where the Customer is in default with other credit providers; and/or</p> <p>(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.</p> <p>21.57 The Customer consents to the Contractor being given a credit report used to collect overdue payment on commercial credit.</p> <p>21.58 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):</p> <p>(a) the provision of Works; and/or</p> <p>(b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Works; and/or</p> <p>(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Contractor; and/or</p> <p>(d) enabling the collection of amounts outstanding in relation to the Works.</p> <p>21.59 The Contractor may give information about the Customer to a CRB for the following purposes:</p> <p>(a) to obtain a consumer credit report;</p> <p>(b) allow the CRB to create or maintain a credit information file about the Customer's credit history.</p> <p>21.60 The information given to the CRB may include:</p> <p>(a) Personal Information as outlined in 25.3 above;</p> <p>(b) name of the credit provider and that the Contractor is a current credit provider to the Customer;</p> <p>(c) whether the credit provider is a licensee;</p> <p>(d) type of credit provided;</p> <p>(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);</p> <p>(f) advice of consumer credit defaults, overdue accounts, loans 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 direct 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 consents surrounding that discharge (e.g. dates of payments);</p> <p>(g) information that, in the opinion of the Contractor, the Customer has committed a serious credit infringement;</p> <p>(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).</p> <p>21.61 The Customer shall have the right to request (by e-mail) from the Contractor:</p> <p>(a) a copy of the Personal Information about the Customer retained by the Contractor and the right to request that the Contractor correct any incorrect Personal Information; and</p> <p>(b) if the Contractor does not disclose any Personal Information about the Customer for the purpose of direct marketing.</p> <p>21.62 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 Contract or if it is required to be maintained and/or stored in accordance with the law.</p> <p>21.63 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</p>	<p>21.64 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.</p> <p>21.65 Dispute Resolution</p> <p>21.66 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:</p> <p>(a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and</p> <p>(b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.</p> <p>21.67 Other Applicable Legislation</p> <p>21.68 At the Contractor's sole discretion, if there are any disputes or claims for unpaid Works and/or Materials then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Construction Contracts Act 2004 (Western Australia), Building Industry Fairness (Security of Payment) Act 2017 (Queensland), Construction Contracts (Security of Payments) Act (Northern Territory of Australia), Building and Construction Industry Security of Payments Act 2009 (Tasmania), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) may apply.</p> <p>21.69 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 21.7 (each as applicable), except to the extent permitted by the Act where applicable.</p> <p>21.70 Service of Notices</p> <p>21.71 Any written notice given under this Contract shall be deemed to have been given and received:</p> <p>(a) by handing the notice to the other party, in person;</p> <p>(b) by leaving it at the address of the other party as stated in this Contract;</p> <p>(c) by sending it by registered post to the address of the other party as stated in this Contract;</p> <p>(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;</p> <p>(e) by email to the other party's last known email address.</p> <p>21.72 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.</p> <p>21.73 Trusts</p> <p>21.74 If the Customer at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Customer covenants with the Contractor as follows:</p> <p>(a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;</p> <p>(b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;</p> <p>(c) the Customer will not without consent in writing of the Contractor the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:</p> <p>(i) the removal, replacement or retirement of the Customer as trustee of the Trust;</p> <p>(ii) any alteration to or variation of the terms of the Trust;</p> <p>(iii) any advancement or distribution of capital of the Trust; or</p> <p>(iv) any resettlement of the trust property.</p> <p>21.75 General</p> <p>21.76 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.</p> <p>21.77 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which the Materials and/or Works were provided by the Contractor to the Customer however, in the event of a dispute that deems necessary for the matter to be referred to a Magistrate or higher Court then jurisdiction will be subject to the courts in the state of Tasmania in which the Contractor has its principal place of business.</p> <p>21.78 Subject to clause 21, 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 Works).</p> <p>21.79 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.</p> <p>21.80 The Customer cannot licence or assign without the written approval of the Contractor.</p> <p>21.81 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.</p> <p>21.82 The Customer agrees that the Contractor may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Contractor to provide Works to the Customer.</p> <p>21.83 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.</p> <p>21.84 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.</p>
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