

TERMS & CONDITIONS OF TRADE

1. Definitions

- 1.1 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Contractor to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors, and permitted assigns.
- 1.2 **"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 (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.3 **"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.
- 1.4 **"Contractor"** means Devex Systems Pty Ltd T/A Devex Systems and Floor Heat Australia, its successors and assigns or any person acting on behalf of and with the authority of Devex Systems Pty Ltd trading as Devex Systems and Floor Heat Australia.
- 1.5 **"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 Client does not wish to allow Cookies to operate in the background when using the Contractor's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.6 **"Goods"** means all Goods or Services (including, but not limited to, any consultation and installation Services) supplied by the Contractor to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.7 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.8 **"Price"** means the Price payable (plus any GST where applicable) for the Goods as agreed between the Contractor and the Client in accordance with clause 7 below.

2. Acceptance

- 2.1 The parties acknowledge and agree that:
 - (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods.
- 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.
- 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.
- 2.4 The Client acknowledges and accepts that the supply of Goods:
 - (a) on credit shall not take effect until the Client has completed a credit application with the Contractor and it has been approved with a credit limit established for the account. In the event that the supply of Goods requested exceeds the Client's credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse Delivery; and
 - (b) for accepted orders may be subject to availability and if, for any reason, the Goods are not or cease to be available, the Contractor reserves the right to substitute comparable Goods (or components of the

Goods) and vary the Price as per clause 7.2. In all such cases the Contractor will notify the Client in advance of any such substitution, and also reserves the right to place the Client's order and/or Services on hold, as per clause 8.2 until such time as the Contractor and the Client agree to such changes.

- 2.5 The Client acknowledges and accepts that all descriptive specifications, illustrations, drawings, data, dimensions, and weights stated in the Contractor's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by the Contractor. While the Contractor may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that the Contractor has given these in good faith and are estimates based on industry prescribed estimates.
- 2.6 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 (NSW), Section 9 of the Electronic Communications Act 2000 (SA), Section 9 of the Electronic Transactions Act 2001 (ACT), Section 9 of the Electronic Transactions (Victoria) Act 2000, Section 9 of the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (TAS), Section 10 of the Electronic Transactions Act 2011 (WA), or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. **Authorised Representatives**

- 3.1 The Client acknowledges that the Contractor shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to the Contractor, that person shall have the full authority of the Client to order any Goods/Services and/or to request any variation thereto on the Client's behalf. The Client accepts that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor's profit margin) in providing any Goods/Services or variation/s requested thereto by the Client duly authorised representative.

4. **Errors and Omissions**

- 4.1 The Client 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 in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Services.
- 4.2 In circumstances where the Client is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not) ("**Client Error**"). The Client must pay for all Goods it orders from the Contractor notwithstanding that such Goods suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take Delivery of such Goods. The Contractor is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

5. **Change in Control**

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

6. Credit Card Information

- 6.1 The Contractor will:
- (a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by the Contractor;
 - (b) not disclose the Client's credit card details to any third party; and
 - (c) not unnecessarily disclose any of the Client's personal information, except in accordance with the Privacy Act (clause 21) or where required by law.
- 6.2 The Client expressly agrees that, if pursuant to this Contract, there are any unpaid charges or other amounts due, the Contractor is entitled to immediately charge the Client's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Client pursuant to the terms of this Contract.

7. Price and Payment

- 7.1 At the Contractor's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by the Contractor to the Client upon placement of an order for Goods; or
 - (b) the Contractor's quoted Price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 7.2 The Contractor reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the worksite, health hazards and/or safety considerations (such as the discovery of asbestos and/or other toxic materials, etc.), obscured building/worksite defects, ready availability of the Goods, variations in quantity or volume of Goods to be supplied, inaccurate measurements supplied by the Client, prerequisite work by any third-party not being completed, lack of required utilities, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, uneven work surfaces (due to sub-floor issues), or hidden or unidentified underground locations or services (as per clause 12), etc.), which are only discovered upon commencement of the Services; or
 - (d) in the event of increases to the Contractor's in the cost of labour or Goods/materials which are beyond the Contractor's control.
- 7.3 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 Client 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.
- 7.4 At the Contractor's sole discretion, a reasonable non-refundable deposit may be required upon placement of an order for Goods, in accordance with any quotation provided by the Contractor or as notified to the Client prior to the placement of an order for Goods.
- 7.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:
- (a) for approved credit account holders, the date which shall either be fourteen (14) or thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by the Contractor.
- 7.6 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Contractor.

- 7.7 The Contractor may in its discretion allocate any payment received from the Client 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 Client 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 such manner as preserves the maximum value of the Contractor's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 7.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify the Contractor in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Contractor investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Contractor placing the Client's account into default and subject to default interest in accordance with clause 19.1.
- 7.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set-off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

8. Provision of the Services

- 8.1 Subject to clause 8.2 it is the Contractor's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 8.2 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control, including, but not limited to, any failure by the Client to:
- (a) make a selection; or
 - (b) have the worksite ready for the Services; or
 - (c) notify the Contractor that the worksite is ready.
- 8.3 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at the Contractor's address; or
 - (b) the Contractor (or the Contractor's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 8.4 The cost of Delivery will be payable by the Client in accordance with the quotation provided by the Contractor to the Client, or as otherwise notified to the Client prior to the placement of an order for Goods.
- 8.5 The Contractor may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 8.6 The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery.
- 8.7 Any time specified by the Contractor for Delivery of the Goods is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Client because of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. If the Contractor is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then the Contractor shall be entitled to charge a reasonable fee for redelivery and/or storage.

9. Plans and Specifications

- 9.1 It is the Client's responsibility to ensure that the plans, specifications (including CAD plans) and other information provided by the Client to the Contractor are accurate. The Client acknowledges and agrees that

in the event that any plans, specifications (including CAD plans) or information provided by the Client is inaccurate:

- (a) the Contractor accepts no responsibility or liability for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information;
- (b) the Contractor is entitled to suspend or terminate the supply of Goods or Services to the Client if there is a material change to the scope of Services as a result of inaccurate plans, specifications or other information;
- (c) the Client shall be liable for the Contractor's costs of de-mobilisation or re-mobilisation of any plant, equipment, or staff to or from the worksite, upon the re-commencement of the Services at the worksite, if applicable; and
- (d) the Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.

10. Risk

- 10.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 10.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, the Contractor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.
- 10.3 If the Client requests the Contractor to leave Goods outside the Contractor's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.
- 10.4 Where the Contractor is to both supply and install Goods then the Contractor shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Client.
- 10.5 Any advice, recommendation, information, or assistance provided by the Contractor in relation to the Goods or Services supplied is given in good faith to the Client, or the Client's agent and is based on the Contractor's own knowledge and experience and shall be accepted without liability on the part of the Contractor. Where such advice or recommendations are not acted upon then the Contractor shall require the Client or their agent to authorise commencement of the Services 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 Services. Accordingly, the Contractor offers no warranty in regard to the aforementioned.
- 10.6 The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If, for any reason (including, the discovery of asbestos, insufficient or defective foundations, walls or other structures not erected by the Contractor, defective or unsafe wiring, or dangerous access to roofing), the Contractor reasonably forms the opinion that the Client's premises is not safe for the installation of Goods to proceed then the Contractor shall be entitled to delay installation of the Goods **(in accordance with clause 8.2)** until the Contractor is satisfied that it is safe for the installation to proceed.
- 10.7 The Client acknowledges and accepts that the Contractor:
 - (a) is only responsible for parts that are replaced by the Contractor, and in the event that other parts/Goods, subsequently fail, the Client agrees to indemnify the Contractor against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising;
 - (b) shall not accept any responsibility for any damage that may arise during the installation of control panel in the event that any third-party contractor employed by the Client has removed any or all reference to the positioning of the panel by either gibling or plastering the designated area. The Client accepts that installation of the control panel will then be at the sole discretion of the Contractor. If the Client believes that they have any claim in relation to Services undertaken by that third-party then said claim must be made against the third-party contractor in the first instance; and
 - (c) accepts no responsibility for:

- (i) any defects or damage in any Goods caused by movement and/or interference of the said Goods;
 - (ii) painting, re-decorating, re-sealing, carpentry or any other Services required for the restoration or making good of any surface/area where any Services have been carried out; and
 - (iii) any damage or performance related problems with any Goods where they have not been used and/or maintained in accordance with the Contractor's and/or the manufacturers' recommendations.
- 10.8 The Client acknowledges and agrees that they shall:
- (a) not be entitled to withhold any payment due under this Contract because of any delay in the connection of, or the supply of electricity to the Goods by an electrical distributor or any other third-party; and
 - (b) be responsible for any building work, excavation work, core drilling or any other non-standard surface penetrations that need to be carried out to enable the Contractor to carry out the Services.
- 10.9 If during the course of installation when the Services are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by the Contractor, then the Contractor shall notify the Client immediately. The power, if isolated, will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Services including any Goods and labour shall be the responsibility of the Client and will be shown as a variation on the invoice.

11. Worksite Access and Condition

- 11.1 The Contractor is not responsible for the removal of rubbish from or clean-up of the building/construction worksite/s. All rubbish generated by the Contractor will be placed in a designated area appointed by the Client but the responsibility of removal of same is the Client or the Client's agent, unless otherwise agreed.
- 11.2 It is the intention of the Contractor and agreed by the Client that:
- (a) the Client shall ensure that the Contractor has clear and free access to the worksite at all times to enable them to undertake the Services (including carrying out worksite inspections, gain signatures for required documents, and for the Delivery and installation of the Goods). The Contractor shall not be liable for any loss or damage to the worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Contractor; and
 - (b) it is the Client's responsibility to:
 - (i) ensure that access is suitable to accept the weight of laden trucks, or other heavy equipment as may be deemed necessary by the Contractor. The Client 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;
 - (ii) make the premises available on the agreed date and time. If installation is interrupted by the failure of the Client to adhere to the installation schedule agreed to between the Contractor and the Client, any additional costs will be invoiced to the Client as an extra;
 - (iii) provide the Contractor, while at the worksite, with adequate access to available water, electricity, toilet and washing facilities; and
 - (iv) remove all fragile items such as glassware, crockery, pot plants, furniture, and ornaments. Breakages and damages are the responsibility of the Client. All care taken but no responsibility accepted by the Contractor in this regard.
- 11.3 Where the Contractor requires that Goods/materials, equipment, plant, and tools etc. required for the Services be stored at the worksite, the Client shall supply the Contractor a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft, or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.
- 11.4 The Client agrees to be present at the worksite when and as reasonably requested by the Contractor and its employees, contractors and/or agents.
- 11.5 *Worksite Inductions*
- (a) in the event the Client requires an employee or sub-contractor of the Contractor to undertake a worksite induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to pay the Contractor's standard (and/or overtime, if applicable) hourly labour rate; or

- (b) where the Contractor is in control of the worksite, the Client and/or the Client's third-party contractors must initially carry out the Contractor's Health & Safety induction course before access to the worksite will be granted. Inspection of the worksite during the course of the Services will be by **appointment only** and unless otherwise agreed, in such an event the Client and/or third-party acting on behalf of the Client must at all times be accompanied by the Contractor.

12. Underground Locations

- 12.1 Prior to the Contractor commencing any work the Client must advise the Contractor of the precise location of all underground services on the worksite and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the worksite.
- 12.2 Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.

13. Compliance with Laws

- 13.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods/Services, including any work health and safety laws (WHS) relating or any other relevant safety standards or legislation pertaining to the Goods/Services.
- 13.2 Both parties acknowledge and agree:
- (a) to comply with the National Construction Code of Australia (NCC) and comply with section 74AA (products associated with building works and/or the intended use) and section 74AE (Chain of Responsibility) of the QBCC Act 1991 (QLD), the Building Products (Safety) Act 2017 (NSW), the Development Act 1993 (SA), the Building Act 2004 (ACT), The Building Act 1993 (NT), the Building Act 2016 and the Building Regulations 2016 (TAS), the Building Act 1993 (VIC), the Home Building Contracts Act 1991 (WA), in respect of all workmanship and building products to be supplied during the course of the Services; and
- (b) that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 13.3 Where the Client has supplied products for the Contractor to complete the Services, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the intended use and any faults inherent in those products. However, if in the Contractor's opinion, it is believed that the materials supplied are non-conforming products and will not conform with state and/or territory regulations, then the Contractor shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 7.2.
- 13.4 The Client shall obtain (at the expense of the Client) all licenses and approvals (including, but not limited to, obtaining the Code Compliance Certificate(s)) that may be required for the Services.
- 13.5 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 13.6 Any live Services or Services undertaken near live conductors where it is safe to do so shall be dealt with in accordance with Australian and New Zealand Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Commonwealth and Statutory Acts and Work Place Regulations". The Contractor's live Services procedures are designed to eliminate risk of injury to the Contractor's employees, damage to the Client's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Services for which additional charges may be applicable. This shall be invoiced in accordance with clause 7.2.

14. Title

- 14.1 The Contractor and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid the Contractor all amounts owing to the Contractor; and
 - (b) the Client has met all of its other obligations to the Contractor.
- 14.2 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.
- 14.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 14.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to the Contractor on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand;
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs;
 - (e) the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Goods are kept and recover possession of the Goods;
 - (f) the Contractor may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Contractor; and
 - (h) the Contractor may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

- 15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 15.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Contractor to the Client, and the proceeds from such Goods.
- 15.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which 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 15.3(a)(i) or 15.3(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 Goods 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 Goods or the proceeds of such Goods in favour of a third-party without the prior written consent of the Contractor;
 - (e) immediately advise the Contractor of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales.
- 15.4 The Contractor and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

- 15.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by the Contractor, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Client must unconditionally ratify any actions taken by the Contractor under clauses 15.3 to 15.5.
- 15.9 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

16. Security and Charge

- 16.1 In consideration of the Contractor agreeing to supply the Goods and/or provide its Services, the Client grants the Contractor a security interest by way of a floating charge (registerable by the Contractor pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Goods and/or Services under this Contract and/or permit the Contractor to appoint a receiver to the Client in accordance with the *Corporations Act 2001* (Cth).
- 16.2 The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 16.3 In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 14.1, 15.2 and 16.1 as applicable, is deemed insufficient by the Contractor to secure the repayment of monies owed by the Client to the Contractor, the Client hereby grants the Contractor a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

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

- 17.1 The Client must inspect the Goods on Delivery and must within seven (7) days of Delivery notify the Contractor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Contractor to inspect the Goods.
- 17.2 Further to clause 17.1, in the event a warranty repair is required, and if the Contractor determines, at their sole discretion, that the defect was not as a result of the Contractor's faulty workmanship, the Client acknowledges and accepts they shall be liable for all applicable charges incurred in the rectification Services.
- 17.3 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**).
- 17.4 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.5 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 Goods. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.6 If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.

- 17.7 If the Contractor is required to replace the Goods under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Client has paid for the Goods.
- 17.8 If the Client is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Goods is:
 - (a) limited to the value of any express warranty or warranty card provided to the Client by the Contractor at the Contractor's sole discretion;
 - (b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 17.9 Subject to this clause 17, returns will only be accepted provided that:
 - (a) the Client has complied with the provisions of clause 17.1; and
 - (b) the Contractor has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 17.10 Notwithstanding clauses 17.1 to 17.9 but subject to the CCA, the Contractor shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - (a) the Client failing to properly maintain or store any Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by the Contractor;
 - (e) fair wear and tear, any accident, or act of God.
- 17.11 The Contractor may in its absolute discretion accept non-defective Goods for return in which case the Contractor may require the Client to pay handling fees of up to thirty percent (30%) of the value of the returned Goods plus any freight costs.
- 17.12 Notwithstanding anything contained in this clause if the Contractor is required by a law to accept a return, then the Contractor will only accept a return on the conditions imposed by that law.
- 17.13 Subject to clause 17.1, customised, or non-stocklist items or Goods made or ordered to the Client's specifications are not acceptable for credit or return.

18. Intellectual Property

- 18.1 Where the Contractor has designed, drawn, or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Contractor. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.
- 18.2 The Client 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 Client's order and the Client agrees to indemnify the Contractor against any action taken by a third-party against the Contractor in respect of any such infringement.
- 18.3 The Client agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, or Goods which the Contractor has created for the Client.

19. Default and Consequences of Default

- 19.1 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.
- 19.2 If the Client owes the Contractor any money, the Client shall indemnify the Contractor from and against all costs and disbursements:

- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Client would be liable;
- in regard to legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under these terms and conditions, internal administration fees, the Contractor's Contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.

- 19.3 Further to any other rights or remedies the Contractor may have under this Contract, if a Client has made payment to the Contractor, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 19.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by the Contractor;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Cancellation

- 20.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("**the Breaching Party**") the other party may suspend or terminate the supply or purchase of Goods and/or Services to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 20.2 If the Contractor, due to reasons beyond the Contractor's reasonable control, is unable to deliver any Goods and/or Services to the Client, the Contractor may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any money paid by the Client for the Goods and/or Services. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 The Client may cancel Delivery of the Goods and/or Services by written notice served within twenty-four (24) hours of placement of the order. If the Client cancels Delivery in accordance with this clause 20.3, the Client will not be liable for the payment of any costs of the Contractor, except where a deposit is payable in accordance with clause 7.4. Failure by the Client to otherwise accept Delivery of the Goods and/or Services shall place the Client in breach of this Contract.
- 20.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

21. Privacy Policy

- 21.1 All emails, documents, images, or other recorded information held or used by the Contractor is Personal Information, as defined and referred to in clause 21.3, 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 the Part IIIC of the Act being

Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Contractor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Contractor that may result in serious harm to the Client, the Contractor will notify the Client 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 Client by written consent, unless subject to an operation of law.

21.2 Notwithstanding clause 21.1, privacy limitations will extend to the Contractor in respect of Cookies where the Client utilises the Contractor's website to make enquiries. 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 Client's:

- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to the Contractor when the Contractor sends an email to the Client, so the Contractor may collect and review that information ("collectively Personal Information")

If the Client consents to the Contractor's use of Cookies on the Contractor's website and later wishes to withdraw that consent, the Client may manage and control the Contractor's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

21.3 The Client agrees that the Contractor may exchange information about the Client with those credit providers and with related body corporates for the following purposes:

- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.

21.4 The Client consents to the Contractor being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.

21.5 The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other agreed purposes or required by):

- (a) the provision of Goods; and/or
- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (d) enabling the collection of amounts outstanding in relation to the Goods.

21.6 The Contractor may give information about the Client to a CRB for the following purposes:

- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Client including credit history.

21.7 The information given to the CRB may include:

- (a) Personal Information as outlined in 21.3 above;
- (b) name of the credit provider and that the Contractor is a current credit provider to the Client;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults (provided the Contractor is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue

- accounts and the Contractor has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of the Contractor, the Client has committed a serious credit infringement;
- (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 21.8 The Client shall have the right to request (by e-mail) from the Contractor:
- (a) a copy of the Personal Information about the Client retained by the Contractor and the right to request that the Contractor correct any incorrect Personal Information; and
- (b) that the Contractor does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 21.9 The Contractor will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 21.10 The Client can make a privacy complaint by contacting the Contractor via e-mail. The Contractor will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

22. Other Applicable Legislation

- 22.1 At the Contractor's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services 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), Building and Construction Industry (Security of Payment) Act 2021 (Western Australia), Building Industry Fairness (Security of Payment) Act 2017 (Queensland), Construction Contracts (Security of Payments) Act 2004 (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.
- 22.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 22.1 (each as applicable), except to the extent permitted by the Act where applicable.

23. Service of Notices

- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission; or
- (e) if sent by email to the other party's last known email address.
- 23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

24. Trusts

- 24.1 If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Client covenants with the Contractor as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;

- (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be 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 Client against the Trust, the trustees and the trust fund. The Client 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;
- (c) the Client will not during the term of the Contract 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:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.

25. General

- 25.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 25.2 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, that provision shall be severed from this Contract, and the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.
- 25.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of the state or territory in which the Goods and/or Services were provided by the Contractor to the Client however, in the event of a dispute that deems necessary for the matter to be referred to a Magistrates or higher Court then jurisdiction will be subject to the Manly Local Court in the state of New South Wales in which the Contractor has its principal place of business. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).
- 25.4 The Contractor may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- 25.5 The Client cannot licence or assign without the written approval of the Contractor.
- 25.6 The Contractor may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.
- 25.7 The Client agrees that the Contractor may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Contractor to provide Goods to the Client.
- 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, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to the Contractor, once the parties agree that the Force Majeure event has ceased.
- 25.9 Both parties warrant that they have the power to enter 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.

- 25.10 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and Delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
- 25.11 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.