

**1. Definitions**

- 1.1. "Contractor" means Fast Forward Construction Pty Ltd T/A Advance Maintenance Service, its successors and assigns or any person acting on behalf of and with the authority of Fast Forward Construction Pty Ltd T/A Advance Maintenance Service.
- 1.2. "Client" means the person/s ordering the Works/Equipment as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3. "Works" means all Works or Materials supplied by the Contractor to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).
- 1.4. "Equipment" means all Equipment including any accessories supplied on hire by the Contractor to the Client (and where the context so permits shall include any supply of Works). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Contractor to the Client.
- 1.5. "Price" means the Price payable for the Works and/or Equipment hire as agreed between the Contractor and the Client in accordance with clause 6 below.
- 1.6. "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

**2. Acceptance**

- 2.1. The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works/Equipment.
- 2.2. These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Contractor.
- 2.3. The Client accepts and acknowledges that any information supplied to the Client by the Contractor for the purposes of providing a quotation, remains the property of the Contractor and must not be forwarded to any other party in order for that party to submit a quotation/tender for works. In the event that the Client fails to comply with this clause, the Contractor reserves the right to charge the Client for time taken to prepare the quotation and for any information and/or documentation supplied.
- 2.4. The Client acknowledges that the supply of Works/Materials/Equipment 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.
- 2.5. In the event that the supply of Works/Materials/Equipment request exceeds the Client's credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery.
- 2.6. Any proposed change to the Scope of Works requested by the Client must be made in writing to the Contractor. Additional charges may apply (in accordance with clause 6.2).

**3. Electronic Transactions Acts**

- 3.1. Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or section 9 of the Electronic Transactions Act 2000 (NSW), or any other applicable provisions of that Act or any Regulations referred to in that Act.

**4. Change in Control**

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

**5. Quotations/Estimates/Scope of Works**

- 5.1. The Client accepts and acknowledges that the Contractor's quotation or estimate includes solely the Scope of Works expressed and described therein. Whilst the Contractor has taken all reasonable care in the preparation of the quotation/estimate, the Client accepts that additional Works may be required and will be charged as a variation in accordance with clause 6.2.
- 5.2. It is the Client's responsibility to ensure that the description of the Scope of Works on the Contractor's quotation/estimate is correct and complete (including, but not limited to, product selection, methodology of the Works, quality and appearance of the finished products) and that all other project specifics are expressly included, and to notify the Contractor of any errors and/or omissions before acceptance of the quotation/estimate.
- 5.3. Preliminary site inspections shall be made by the Contractor in order to provide the Client with a quotation/estimate. In the event that restricted site access, furnishings, and/or other obstacles affect the Contractor's ability to provide an accurate quotation/estimate, the Client accepts that additional charges may apply (in accordance with clause 6.2) subject to final site inspection and measurement.
- 5.4. The Contractor's quotation/estimate is prepared on the basis that all Works shall be undertaken during the Contractor's normal working hours. In the event that the Client requires the Contractor to work outside normal business hours (including, but not limited to, extended hours, weekends and/or public holidays), then the Contractor reserves the right to charge the Client additional labour costs agreed upon in the quotation, variation or any other from provided to the Client by the Contractor (penalty rates will apply), unless otherwise agreed between the Contractor and the Client.
- 5.5. The Contractor reserves the right to withdraw or retract a quotation/estimate and the provision of the Works before such time as the quotation/estimate has been accepted by the Client and the Works have commenced.

**6. Price and Payment**

- 6.1. At the Contractor's sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by the Contractor to the Client in respect of Works performed or Materials/Equipment supplied; or
  - (b) the Contractor's estimated Price (subject to clause 6.2) which shall not be deemed binding upon the Contractor, as the actual Price can only be determined upon completion of the Works; or
  - (c) the Contractor's quoted Price (subject to clause 6.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.
- 6.2. The Contractor reserves the right to change the Price:
  - (a) if a variation to the Works/Equipment which are to be supplied is requested; or
  - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or

- (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, obscured building defects, change of design, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Works; or
- (d) in the event of delays outside of the Contractor's control; or
- (e) in the event of increases to the Contractor in the cost of labour or materials which are beyond the Contractor's control.
- 6.3. Variations will be charged for on the basis of the Contractor's quotation and will be shown as variations on the 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 their time of completion.
- 6.4. At the Contractor's sole discretion a deposit of thirty percent (30%) of the Price may be required.
- 6.5. Time for payment for the Works/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:
- (a) on delivery of the Materials/Equipment; or
- (b) before delivery of the Materials/Equipment; or
- (c) on completion of the Works; or
- (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 site but not yet installed; or
- (e) the date specified on any invoice or other form as being the date for payment; or
- (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Contractor.
- 6.6. 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 Client and the Contractor.
- 6.7. 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.
- 6.8. 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 of Works/Equipment by the Contractor under this or any other agreement. 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.
- 7. Delivery**
- 7.1. The Client shall advise the Contractor of all colour, materials, fixtures and fittings selected (including, but not limited to, tiles, carpet etc) within five (5) days of the commencement of the Works (unless otherwise agreed). Failure to do so may result in time delays and additional charges.
- 7.2. Subject to clause 7.3 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.3. The Works commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
- (b) have the site ready for the Works; or
- (c) notify the Contractor that the site is ready.
- Any delays due to the Client's failure in accordance with this clause 7.2, or due to incorrect, inappropriate, missing or damaged materials supplied by the Client, may result in additional charges in accordance with clause 6.2
- 7.4. Delivery of the Materials/Equipment is taken to occur at the time that the Contractor (or the Contractor's nominated carrier) delivers the Materials/Equipment to the Client's nominated address even if the Client is not present at the address.
- 7.5. At the Contractor's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 7.6. The Client must take delivery by receipt or collection of the Materials/Equipment whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Materials/Equipment as arranged then the Contractor shall be entitled to charge a reasonable fee for redelivery and/or storage of the Materials/Equipment.
- 7.7. The Contractor may deliver the Works/Equipment by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.8. Any time or date given by the Contractor to the Client is an estimate only. The Contractor shall not be liable for any loss or damage whatsoever due to failure by the Contractor to deliver the Works/Equipment (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of the Contractor.
- 8. Risk**
- 8.1. If the Contractor retains ownership of the Materials under clause 14 then;
- (a) where the Contractor is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery;
- (b) where the Contractor is to both supply and install Materials then the Contractor shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 8.2. Notwithstanding the provisions of clause 8.1 if the Client specifically requests the Contractor to leave Materials outside the Contractor's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 8.3. Where the Contractor is required to install the Materials the Client warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and the Contractor shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 8.4. Where the Client has supplied Materials for the Contractor to complete the Works, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the Materials. The Contractor shall not be responsible for any defects in the Works, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of Materials supplied by the Client.

- 8.5. The Client acknowledges that the Contractor is only responsible for parts that are replaced by the Contractor and that in the event that other parts/Materials, subsequently fail, the Client agrees to indemnify the Contractor against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.
- 8.6. The Client acknowledges that Materials (including but not limited to paint, timber, granite, tiles & concrete) supplied may:
- (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and
  - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
  - (c) mark or stain if exposed to certain substances; and
  - (d) be damaged or disfigured by impact or scratching.
- 8.7. While every effort will be taken by the Contractor to match colour or grain of product, the Contractor will take no responsibility for any variation of grain of timber, granite and other natural products between existing structures/installations or sale samples and the final product.
- 8.8. The Contractor shall be indemnified from any damage that may be caused during the removal of existing fittings in preparation for the installation of the Materials.
- 8.9. The Client acknowledges that Materials used on roofs move, expand, and contract over time due to environmental conditions. Whilst all care shall be taken by the Contractor when attempting to rectify roof leaks, the Contractor cannot guarantee that leaks will not re-occur unless the Contractor replaces the entire roof.
- 8.10. The Contractor shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Contractor accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.11. It shall be the Client's responsibility to arrange for all other licenced tradesmen as required, unless otherwise agreed between the Contractor and the Client at that time of the quotation.
- 8.12. The Client agrees to indemnify the Contractor from any damage caused to the Contractor's Works by any other tradesmen during or after the provision of Works.
- 8.13. The Contractor shall accept no responsibility for work undertaken by any third party contractor employed by the Client. If the Client believes that they have any claim in relation to works undertaken by that third party then said claim must be made against the third party contractor in the first instance. Any delays or damages incurred by the Contractor as a result of any action or inaction by the Client's sub-contractor shall be the Client's responsibility.
- 8.14. Where the Contractor gives advice or recommendations to the Client, or the Client's agent, with specific instructions regarding the use of the Materials or the scope of the Works, and such advice or recommendations are not acted upon, then the Contractor shall require the Client, or the Client's agent, to authorise the 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.
- 8.15. Any advice, recommendation, information, assistance or service provided by the Contractor in relation to Materials or Works supplied is given in good faith, is based on the Contractor's own knowledge and experience and shall be accepted without liability on the part of the Contractor and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Materials or Works.

## **9. Third Party Subcontractors**

- 9.1. The Contractor's sub-contractor must at the expense of the sub-contractor obtain and maintain for the duration of this contract the following:
- (a) all necessary statutory workers' compensation insurance against any liability, loss, claim or proceeding whatsoever arising by virtue of any Statute relating to workers' compensation by any person employed by the sub-contractor in or about the execution of the contract works in respect of whom the sub-contractor may be or become liable, whether employed by the sub-contractor or not (and otherwise comply with all statutory workers compensation requirements); and
  - (b) a valid and enforceable public liability insurance policy against liability to third persons or in respect of the property of third persons in an amount satisfactory to the Contractor; and
  - (c) a valid and enforceable professional indemnity insurance policy to cover the sub-contractor and the sub-contractor's employees and workers.
- 9.2. Any such claims subject to this contract in respect of third party sub-contractors engaged by the Contractor must be made direct to the sub-contractor in the first instance with notification also to the Contractor.

## **10. Access**

- 10.1. The Client shall ensure that the Contractor has clear and free access to the work site at all times to enable them to undertake the Works. The Contractor shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted, paved or grassed areas, ceiling tiles and panels, face brickwork and rendered masonry services) unless due to the negligence of the Contractor.

## **11. Underground/Hidden Mains and Services**

- 11.1. Prior to the Contractor commencing any work the Client must advise the Contractor of the precise location of all underground/hidden mains/services on the site and clearly mark the same. The 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 site.
- 11.2. Whilst the Contractor will take all care to avoid damage to any underground/hidden services the Client agrees to indemnify the Contractor in respect of any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 11.1.

## **12. Surplus Materials**

- 12.1. Unless otherwise stated elsewhere in this contract;
- (a) only suitable new Materials will be used;
  - (b) demolished Materials remain the Client's property; and
  - (c) Materials which the Contractor brings to the site which are surplus remain the property of the Contractor.

**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 Works.
- 13.2. The Client shall obtain (at the expense of the Client) all licenses, approvals, applications and permits that may be required for the Works, which are not included in the project documents provided by the Contractor.
- 13.3. The Client agrees that the site will comply with any work health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

**14. Title to Materials**

- 14.1. The Contractor and the Client agree that ownership of the Materials 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:
  - (a) until ownership of the Materials passes to the Client in accordance with clause 14.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Contractor on request.
  - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
  - (c) the production of these terms and conditions by the Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor to make further enquiries.
  - (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand.
  - (e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs.
  - (f) unless the Materials have become fixtures the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials.
  - (g) the Contractor may recover possession of any Materials in transit whether or not delivery has occurred.
  - (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Contractor.
  - (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 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 Materials/Equipment and/or collateral (account) – being a monetary obligation of the Client to the Contractor for Works – that have previously been supplied and that will be supplied in the future by the Contractor to the Client.
- 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 15.2(a)(i) or 15.2(a)(ii);
  - (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials/Equipment charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials/Equipment and/or collateral (account) 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 Materials which would result in a change in the nature of 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 hereby waives its 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 its 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 its right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8. The Client shall unconditionally ratify any actions taken by the Contractor under clauses 15.2 to 15.5.
- 15.9. Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

**16. Security and Charge**

- 16.1. In consideration of the Contractor agreeing to supply the Works/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

- 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. The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.

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

- 17.1. The Client must inspect all Materials/Equipment on delivery (or the Works on completion) and must within seven (7) days of delivery notify the Contractor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Contractor to inspect the Materials/Equipment or to review the Works provided.
- 17.2. Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 17.3. The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.4. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works/Equipment. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.5. If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.
- 17.6. If the Contractor is required to replace any Materials under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Client has paid for the Materials.
- 17.7. If the Contractor is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then the Contractor may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.
- 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 Materials is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by the Contractor at the Contractor's sole discretion;
  - (b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Materials;
  - (c) otherwise negated absolutely.
- 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 Materials are defective; and
  - (c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 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 Materials;
  - (b) the Client using the Materials for any purpose other than that for which they were designed;
  - (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) interference with the Works by the Client or any third party without the Contractor's prior approval;
  - (e) the Client failing to follow any instructions or guidelines provided by the Contractor;
  - (f) fair wear and tear, any accident, or act of God.
- 17.11. The Contractor may in its absolute discretion accept non-defective Materials for return in which case the Contractor may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Materials 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.

**18. Intellectual Property**

- 18.1. Where the Contractor has designed, drawn, written plans or a schedule of Works, or created any Materials/Equipment for the Client, 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 Client at the Contractor's discretion.
- 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, plans or Materials/Equipment 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 incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's contract default fee, and bank dishonour fees).
- 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 by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 19.4. Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Works/Equipment to the

Client. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.

- 19.5. 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 becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) 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. The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Works/Equipment at any time before the Works are commenced (or the Materials/Equipment are due to be delivered) by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Contractor for Works already performed or Materials/Equipment already provided. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.2. In the event that the Client cancels the delivery of Works/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.3. Cancellation of orders for Materials/Equipment made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

**21. Dispute Resolution**

- 21.1. If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
  - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

**22. Privacy Act 1988**

- 22.1. The Client agrees for the Contractor to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Contractor.
- 22.2. The Client agrees that the Contractor may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 22.3. The Client consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit.
- 22.4. The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works/Equipment; and/or
  - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works/Equipment; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Works/Equipment.
- 22.5. The Contractor may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 22.6. The information given to the CRB may include:
- (a) personal information as outlined in 22.1 above;
  - (b) name of the credit provider and that the Contractor is a current credit provider to the Client;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Contractor has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of the Contractor, the Client has committed a serious credit infringement;
  - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 22.7. The Client shall have the right to request (by e-mail) from the Contractor:
- (a) a copy of the information about the Client retained by the Contractor and the right to request that the Contractor correct any incorrect information; and
  - (b) that the Contractor does not disclose any personal information about the Client for the purpose of direct marketing.
- 22.8. The Contractor will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.

22.9. The Client can make a privacy complaint by contacting the Contractor via e-mail. The Contractor will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

**23. Equipment Hire**

23.1. Equipment shall at all times remain the property of the Contractor and is returnable on demand by the Contractor. In the event that Equipment is not returned to the Contractor in the condition in which it was delivered the Contractor retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all the Contractor shall have right to charge the Client the full cost of replacing the Equipment.

23.2. The Client shall;  
(a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.

(b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.

(c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Contractor to the Client.

23.3. The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self-insure, the Contractor's interest in the Equipment and agrees to indemnify the Contractor against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

**24. Other Applicable Legislation**

24.1. At the Contractor's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Security of Payments Act 1999 (New South Wales), and/or the Building and Construction Industry Payments Act 2004 (Queensland) may apply.

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

**25. General**

25.1. The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

25.2. These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which the Contractor has its principal place of business, and are subject to the jurisdiction of the Southport Courts in that state.

25.3. The Client accepts full responsibility for and shall keep the Contractor indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any death or injury to any person, damage to property, or otherwise, arising (either directly or indirectly) from the Works/Materials supplied, except as regulated by law.

25.4. Subject to clause 17 the Contractor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works/Equipment on hire).

25.5. 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.

25.6. The Client cannot licence or assign without the written approval of the Contractor.

25.7. The Contractor may sub-contract all or any part of its rights and/or obligations under this contract with the written consent of the Client, which shall not be unreasonably withheld. Where the Contractor elects to sub-contract out any part of the Works, it shall not be relieved from any liability or obligation under this contract by doing so. Furthermore, the Client agrees and accepts that it has no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.

25.8. The Client agrees that the Contractor may amend these terms and conditions at any time by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Contractor to provide Works/Equipment to the Client.

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

25.10. Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.