

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 Works 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 a part of a Trust, shall be bound in their 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 Innovative Surface Repairs Pty Ltd T/A Konig Surface Repairs, its successors and assigns or any person acting on behalf of and with the authority of Innovative Surface Repairs Pty Ltd T/A Konig Surface Repairs.
- 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 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.7 **“Intended Use”** means a building product and the use thereof, for which the building product is intended to be, or is reasonably likely to be, associated with a building.
- 1.8 **“Non-Conforming Building Product”** means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
- (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.9 **“Price”** means the Price payable (plus any GST where applicable) for the Works as agreed between the Contractor and the Client in accordance with clause 6 below.
- 1.10 **“Works”** means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Contractor to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.11 **“Worksite”** means the address nominated by the Client to which the Materials are to be supplied by the Contractor.

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.
- 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 that the supply of Works 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 requested 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 advice, recommendation, information, assistance, or service provided by the Contractor in relation to Materials or Works 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 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.
- 2.7 The Client acknowledges and accepts that the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, the Contractor reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 6.2. 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 Works on hold, as per clause 7.2 until such time as the Contractor and the Client agree to such changes.
- 2.8 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 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to the Contractor as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Materials or Works on the Client’s behalf and/or to request any variation to the Works on the Client’s behalf (such authority to continue until all requested Works have been completed or the Client otherwise notifies the Contractor in writing that said person is no longer the Client’s duly authorised representative).

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- 3.2 In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise the Contractor in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor's profit margin) in providing any Materials, Works or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).
- 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 Works.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of the Contractor; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 4.3 In circumstances where the Client is required to place an order for Materials, 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 Materials (whether they are made to order Materials or not) ("**Client Error**"). The Client must pay for all Materials it orders from the Contractor notwithstanding that such Materials suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take delivery of such Materials. The Contractor is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Clients Errors.
- 5. Change in Control**
- 5.1 The Client shall give the Contractor not less than seven (7) 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. 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 supplied; or
 - (b) 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 seven (7) days.
- 6.2 The Contractor reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite, obscured building/Worksite defects, incorrect measurements, plans and/or specifications provided by the Client, as a result of delays from third party suppliers, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, availability of machinery, the Client's decision on colour choice, change of design, detection of moisture, removal of cabinets, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, iron reinforcing rods in concrete or hidden pipes and wiring, etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to the Contractor in the cost of labour or Materials which are beyond the Contractor's control.
- 6.3 Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Client shall be required to respond to any variation submitted by the Contractor within seven (7) working days. Failure to do so will entitle the Contractor to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At the Contractor's sole discretion, a non-refundable deposit may be required.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:
- (a) by way of progress payments in accordance with the Contractor's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the Worksite but not yet installed; or
 - (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 seven (7) days following the date of any invoice given to the Client by the Contractor.
- 6.6 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and the Contractor.
- 6.7 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 Materials.
- 6.8 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 23.1.
- 6.9 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 Contract for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition,

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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. Provision of the Works

- 7.1 Subject to clause 7.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the 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 Works; or
 - (c) notify the Contractor that the Worksite is ready.
- 7.3 At the Contractor's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 7.4 The Contractor may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 Any time specified by the Contractor for delivery of the Works is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that the Contractor is unable to supply the Works as agreed solely due to any action or inaction of the Client, then the Contractor shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

8. Risk

- 8.1 If the Contractor retains ownership of the Materials under clause 18 then:
- (a) where the Contractor is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by the Contractor or the Contractor's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address); or
 - (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 The Contractor shall be entitled to rely on the accuracy of any plans, reports, 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, reports, specifications or other information.
- 8.4 The Client warrants that any part of the Worksite where Materials are to be installed will be of sound substructure and that it is able to withstand such installation. If for any reason that the Contractor, or employees of the Contractor, reasonably form the opinion that the Client's Worksite is not suitable for Works to proceed, then the Contractor shall be entitled to delay Works, (in accordance with the provisions of clause 7.2 above) until the Contractor is satisfied that it is safe for the Works to proceed.
- 8.5 The Client acknowledges that:
- (a) under no circumstances, will the Contractor handle removal of asbestos product. In the event asbestos (or other hazardous material) is discovered on the Worksite:
 - (i) the Contractor shall suspend the Works;
 - (ii) the Client shall be fully responsible for the resolution of any resulting problems; and
 - (iii) any additional cost incurred by the Contractor shall be added to the Price under clause 6.2.
 - (b) Materials supplied may:
 - (i) fade or change colour over time;
 - (ii) expand, contract or distort as a result of exposure to heat, cold, weather;
 - (iii) mark or stain if exposed to certain substances; and
 - (iv) be damaged or disfigured by impact or scratching.
 - (c) variations of colour and texture are inherent in concrete. The Contractor shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture between different batches of product;
 - (d) the alignment of cabinetry joinery doors and carcasses may be affected by movement of homes or buildings;
 - (e) the polish finish of the Materials may be affected by environmental factors (including, but not limited to, humidity, weather, extreme heat etc.). Although the Contractor will employ all possible measures to obtain a high-quality finish, the Contractor shall not be liable for any change in finish which is due to environmental factors; and
 - (f) whilst the Contractor shall take all reasonable care during the performance of the Works, the Client agrees that the Contractor shall not be held liable for any loss, damages, or costs howsoever resulting from drilling or fixing the Materials into any masonry or rendered surfaces during the installation process.
- 8.6 Natural products (including timber) may exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst the Contractor will make every effort to match sales samples to the finished Materials the Contractor accepts no liability whatsoever where such samples differ to the finished Materials supplied.
- 8.7 Timber is a hygroscopic material subject to expansion and contraction; therefore, the Contractor will accept no responsibility for gaps that may appear during prolonged dry periods.

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- 8.8 Marble and Granite are porous products, and therefore, Materials are sealed for protection. However, oil and other acidic substances are prone to causing discolouration and staining if left on surfaces for some time. The Client agrees to indemnify the Contractor against any damage occurring after delivery and installation.
- 8.9 Where the Client requests the re-use of existing materials or the supply of third-party materials (including, but not limited to, granite or stainless-steel bench tops, appliances), no responsibility shall be taken by the Contractor for the appearance, service, or performance of the materials.
- 8.10 Where the removal of existing cabinetry is to be removed by the Contractor, the Client accepts that whilst the Contractor shall exercise due care, the Contractor shall not be held liable for any damage to ceilings, tiles, floors, and fixings that may occur during the removal process.

9. Flooring Risk

- 9.1 The Contractor will:
- (a) not accept responsibility for any damage to the floor due to microenvironments caused by air-conditioning, heating, or large expanses of glass windows without curtains or blinds; and
 - (b) only inspect or view a timber floor from a standing position, as this is generally how you will be living on it. Minor marks or slight imperfections in the floor finish that can only be viewed from a crouching or kneeling position will not be considered defects.
- 9.2 Whilst the Contractor will take all due care to avoid contamination of the finished surface, the Contractor accepts no responsibility for contamination by natural contaminants such as dust or hair which may be present at the Worksite.
- 9.3 The Client acknowledges and accepts that:
- (a) whilst carpet manufacturers make every effort to match dye lots, colours or shade may vary between batches of product and/or between sales samples and actual product supplied;
 - (b) carpet manufacturers cannot guarantee to produce perfectly uniform patterned product, therefore there is no guarantee that patterned product will match perfectly when installed; and
 - (c) the installation process for carpet may require seams and cross-joins and that the appearance of these may be affected by light source and in particular the construction of the chosen product.
- 9.4 The Client acknowledges and agrees that:
- (a) the Contractor shall not be liable for any loss, damages or costs however arising in the event that:
 - (i) a heavy or sharp object is dropped or falls on the vinyl, as vinyl will show scratches and will get cut as it is a soft and flexible Materials;
 - (ii) an object is dragged across it as vinyl can rip and tear; or
 - (iii) the vinyl discolours or bubbles in areas due to exposure to extreme heat (including, but not limited to, conservatories and floor to ceiling windows).
 - (b) vinyl will not fully seal a floor around the edges particularly around showers or baths; the Client also agrees water can get underneath and therefore bubble and/or discolour the vinyl. The Contractor shall not be held liable for any loss, damages or costs however arising due to the same.
- 9.5 The Contractor does not recommend vinyl to be installed over a floor that is a combination of wood and concrete, or expansion joints in concrete floors, as any movement, joint, seams in bison board, or thin line board will show through the vinyl.
- 9.6 The Contractor shall advise the Client if the Contractor believes that there are any issues with the sub floor (including, but not limited to, moisture problems which may cause the vinyl to bubble and discolour) however the Client acknowledges that it is not always possible to identify such problems therefore the Client agrees that the Contractor shall not be held liable in any way whatsoever should any such issue go undetected causing damage to the Materials.
- 9.7 The Client acknowledges that:
- (a) whilst floor levelling compound and floor preparation may help smooth out rough floors; this will not necessarily level a floor; and
 - (b) variations of colour, shade and grain are inherent in all kiln fired products and natural stone. While every effort will be taken by the Contractor to match colour, shade, or grain of product, the Contractor shall not be liable for any loss, damages or costs howsoever arising resulting from any variation in colour, shading, or grain between batches of product or sale samples and the final product supplied.
- 9.8 The Contractor gives no guarantee (expressed or implied) against crazing, cracking, chipping, or scratching that may occur that is beyond the Contractor's control due to the nature of the product at the time of installation, therefore it is recommended that the Client allows for extra product for such breakages.
- 9.9 The Contractor will accept no responsibility for tiles that have already been affixed.

10. Waterproofing Risks

- 10.1 All potential waterproofing surfaces are subject to an inspection by the Contractor prior to the commencement of the Works. In the event that the surface is deemed unsuitable, then the Contractor reserves the right to halt the Works until such time as it is agreed between the Contractor and the Client as to the additional cost in further preparation of the surface in order to make it fit for waterproofing. The additional cost shall be charged as a variation to the quotation as per clause 6.2.
- 10.2 The Client acknowledges and accepts that:
- (a) the Contractor:
 - (i) shall apply the Materials to the manufacturer's specification and in compliance with all relevant industry standards; and
 - (ii) may not be able to ascertain the depth of, or if a void or cavity is present behind a crack for repair without closer inspection. Any additional costs incurred by the Contractor for carrying out such investigation prior to repairing such a defect shall be invoiced as an extra. The Client also accepts that repair methods may alter as a result of any such investigation; and
 - (iii) gives no guarantee (expressed or implied) as to the length of time the curing process of repair Works will take due to factors or conditions outside the Contractor's control (including, but not limited to, the surfaces and the existing condition of the defect, atmospheric conditions including humidity and temperature, the nature of the repair).
- 10.3 It is the intention of the Contractor, and agreed by the Client, that it is the responsibility of the Client to ensure that no other tradesmen work on the membrane applied to the surface, until the membrane is fully dried and cured to manufacturer's specifications. The Contractor shall not be liable for any costs, damages or loss however arising from the Client's failure to comply with this clause.

11. Aluminium and Powder Coating Risk

- 11.1 The Contractor shall not be held liable for:
- (a) an existing coating where the Contractor's paint/powder coating has bonded to the existing coating and weakened, affected or changed the previous coating causing any kind of flake, crack, blemish or surface defect; or
 - (b) the quality of the Works if the Client does not follow the Contractor's recommendations as to the preparation and/or number of coats of paint/powder coating required to obtain the final finish if the Client chooses to accept a reduced Price based on inadequate preparation and/or fewer coats of paint/powder coatings; or
 - (c) any loss or damage to the Works that is caused by the Client. The Contractor shall be under no obligation to repair any damage as a result such damage. Where the Client requests the Contractor to rectify any damage, this shall be charged for in accordance with clause 6.2;
 - (d) any items subject to the coating process which uncovers faults and imperfections in the "raw materials" after processing is complete which is beyond the Contractor's control where the following "raw materials" are supplied:
 - (i) hot dipped galvanised products;
 - (ii) galvanised products;
 - (iii) inferior steel or aluminium;
 - (iv) cast steel or aluminium; or
 - (v) where the Materials fail to retain their original construction or experience any adverse effects due to extreme heat exposure during the coating process and/or during the preparation and coating process; and
 - (e) drilling of hole(s) for the purpose of hanging item(s) for powder coating unless the Client specifies specifically where the Contractor cannot drill hole(s) for this purpose. The Contractor reserves the right to drill hole(s) for the purpose of powder coating but shall at all times act in the best interest of the Client to ensure such drilling of holes shall not affect the appearance on the end product.

12. Worksite Access and Condition

- 12.1 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.
- 12.2 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 Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). 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 provide the Contractor, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities.
- 12.3 *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 Works 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.

13. Client's Responsibilities

- 13.1 It is the intention of the Contractor and agreed by the Client that it is the responsibility of the Client to provide and have erected scaffolding to enable the Works to be undertaken (where in the Contractor's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed.
- 13.2 The Client agrees to remove any furniture, furnishings, or personal goods from the vicinity of the Works and agrees that the Contractor shall not be liable for any damage caused to items through the Client's failure to comply with this clause.
- 13.3 It shall be the Client's responsibility (where applicable) to ensure that, prior to commencement of the Works:
- (a) have all areas clean and clear to enable scheduled work to be completed in accordance with the schedule of installation;
 - (b) remove all existing floor coverings, tacks and staples;
 - (c) fully disclose any information that may affect the Contractor's installation procedures (including, but not limited to, disclosing known breaks or tears in the membrane, extensions of existing slabs, thickened beams, curing compounds that may have been used, or the use of concrete over 25mpa);
 - (d) ensure the sub-floor is adequately ventilated and is structurally sound;
 - (e) ensure that the levels of the sub-floor are satisfactory as the floor coverings can only follow the contours of the sub-floor and will not correct unevenness;
 - (f) provide adequate dust sheets to protect the Client's furniture and décor. The Contractor will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by any sanding process. Flaking or crumbling walls should be temporarily covered by the Client, until the coatings are dry;
 - (g) extinguish all naked flames prior to coating including, but not limited to, pilot lights, heaters etc;
 - (h) supply power to within eight (8) metres of the project; and
 - (i) ensure that full and final lighting as designed for the completed project is fully operational prior to sanding Works commencing and are made available for use at no cost for the duration of the project. Any costs incurred by the Contractor will be invoiced to the Client should this requirement not be met.
- 13.4 The Contractor is not insured to remove furniture or fittings and will not do so, nor is the Contractor licensed to move gas or electrical appliances.

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- 13.5 It shall be the Client's responsibility to make the Worksite available on the agreed dates and times. If the Works are delayed or 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 per clause 6.2.
- 14. Service Locations**
- 14.1 Prior to the Contractor commencing any work the Client must advise the Contractor of the precise location of all services on the Worksite 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 the Worksite.
- 14.2 Whilst the Contractor will take all care to avoid damage to any 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 14.1.
- 15. Compliance with Laws**
- 15.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any work health and safety laws (WHS) relating or any other relevant safety standards or legislation pertaining to the Works.
- 15.2 Both parties acknowledge and agree:
- (a) to comply with the National Construction Code of Australia (NCC) and the Building Products (Safety) Act 2017, in respect of all workmanship and building products to be supplied during the course of the Works; and
- (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 15.3 Where the Client has supplied products for the Contractor to complete the Works, 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 Works 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 6.2.
- 15.4 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 16. Modern Slavery**
- 16.1 For the purposes of this clause:
- (a) "Act" means the *Modern Slavery Act 2018 (cth)*
- (b) "Modern Slavery", "Modern Slavery Statement" and "Reporting Entity" have the meanings given by the Act.
- 16.2 If the Client is a Reporting Entity, it shall comply with all of its obligations under the Act.
- 16.3 Whether the Client is a Reporting Entity or not, the Client shall:
- (a) use reasonable endeavours to identify, assess and address risks of Modern Slavery practices in its operations and supply chains;
- (b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;
- (c) use its reasonable endeavours to ensure that if at any time the Client becomes aware of Modern Slavery practices in its operations and supply chains, the Client must as soon as reasonably practicable take all reasonable steps to address or remove these practices;
- (d) provide to the Contractor a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and
- (e) within seven (7) days of the Contractor's request (or such longer period as the Contractor agrees), provide to the Contractor any information or assistance reasonable requested by the Contractor;
- (i) concerning the Client's compliance with the Act;
- (ii) concerning the Client's operations and supply chains;
- (iii) to enable the Contractor to prepare a Modern Slavery Statement or otherwise comply with the Act; or
- (iv) to enable the Contractor to assess and address risks of Modern Slavery practices in its operations and supply chains.
- 16.4 The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and the Contractor will be able to terminate the Contract for any breach by the Client.
- 16.5 The Client warrants that any information supplied to the Contractor is true and accurate and may be relied upon for the purposes of the Act.
- 16.6 The Client shall indemnify the Contractor against any loss or liability suffered by the Contractor as a result of the Client's breach of this clause 16.
- 17. Insurance**
- 17.1 The Contractor shall have public liability insurance of at least five million dollars (\$5m). It is the Client's responsibility to ensure that they are similarly insured.
- 18. Title**
- 18.1 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.
- 18.2 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.
- 18.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 18.1:
- (a) 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;

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- (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.

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

- 19.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 19.2 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 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.
- 19.3 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 19.3(a)(i) or 19.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of the Contractor;
 - (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.
- 19.4 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.
- 19.5 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.
- 19.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 19.7 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.
- 19.8 The Client shall unconditionally ratify any actions taken by the Contractor under clauses 19.3 to 19.5.
- 19.9 Subject to any express provisions to the contrary (including those contained in this clause 19), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

20. Security and Charge

- 20.1 In consideration of the Contractor agreeing to supply the Materials, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property for the purposes of, including but not limited to registering the Contractor's security interest over the Client on the PPSA, 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).
- 20.2 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.
- 20.3 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 20 including, but not limited to, signing any document on the Client's behalf.

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

- 21.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify the Contractor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Contractor to inspect the Materials or to review the Works provided.
- 21.2 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**).

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- 21.3 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 21.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 21.5 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.
- 21.6 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.
- 21.7 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.
- 21.8 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.
- 21.9 Subject to this clause 21, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 21.1; 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.
- 21.10 Notwithstanding clauses 21.1 to 21.9 but subject to the CCA, the Contractor shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (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.
- 21.11 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 thirty percent (30%) of the value of the returned Materials plus any freight costs.
- 21.12 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.
- 21.13 Subject to clause 21.1, customised, or non-stocklist items or Materials made or ordered to the Client's specifications are not acceptable for credit or return.

22. Intellectual Property

- 22.1 Where the Contractor has designed, drawn, written plans or a schedule of Works, or created any products 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. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.
- 22.2 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.
- 22.3 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 products which the Contractor has created for the Client.

23. Default and Consequences of Default

- 23.1 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.
- 23.2 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, 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.
- 23.3 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 23 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.
- 23.4 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;

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- (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

24. Cancellation

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

25. Privacy Policy

- 25.1 All emails, documents, images or other recorded information held or used by the Contractor is Personal Information, as defined and referred to in clause 25.3, and therefore considered Confidential Information. The Contractor acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including 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.
- 25.2 Notwithstanding clause 25.1, 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.
- 25.3 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, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by the Contractor.
- 25.4 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.
- 25.5 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.
- 25.6 The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other agreed purposes or required by):
 - (a) the provision of Works; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Works.
- 25.7 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.
- 25.8 The information given to the CRB may include:
 - (a) Personal Information as outlined in 25.3 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);

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- (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).
- 25.9 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.
- 25.10 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 Contract or is required to be maintained and/or stored in accordance with the law.
- 25.11 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.

26. Service of Notices

- 26.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 26.2 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.

27. Trusts

- 27.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Contractor may have notice of the Trust, the 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 and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or 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 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 property.

28. Building and Construction Industry Security of Payments Act 1999

- 28.1 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 may apply.
- 28.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

29. General

- 29.1 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.
- 29.2 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 the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 29.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts in that state. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).
- 29.4 Subject to clause 21, 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).
- 29.5 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.
- 29.6 The Client cannot licence or assign without the written approval of the Contractor.

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- 29.7 The Contractor may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.
- 29.8 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 Works to the Client.
- 29.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, 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.
- 29.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 29.11 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.