

# X-Factor Plumbing – Terms & Conditions of Trade

1. **Definitions**
  - 1.1. **Confidential Information** means information of a confidential nature whether 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, Customer information (including but not limited to, **Personal Information** such as name, address, D.O.B., occupation, driver's licence details, electronic credit (email, Facebook, Instagram, Twitter details), financial insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
  - 1.2. **Contract** means the terms and conditions contained herein, together with any quotes and/or invoice or other document or amendments expressed to be supplemental to this Contract.
  - 1.3. **Contractor** means X-Factor Plumbing Pty Ltd ATF X-Factor Plumbing Trust T/A X-Factor Plumbing Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of X-Factor Plumbing Pty Ltd ATF X-Factor Plumbing Trust T/A X-Factor Plumbing Pty Ltd.
  - 1.4. **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 Customer and website, and can be accessed either by the web server or the Customer's computer. If the Customer does not wish to allow cookies to operate in the background when using the Contractor's website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.
  - 1.5. **Customer** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Contractor to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
    - (a) there is more than one Customer, is a reference to each Customer jointly and severally; and
    - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
    - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
    - (d) includes the Customer's executors, administrators, successors and permitted assigns.
  - 1.6. **GST** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (in).
  - 1.7. **Intended Use** means the product and its 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 to 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 Customer 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 Customer at the Customer's request from time to time (where the context so permits the terms **Works** or **Materials** shall be interchangeable for the other).
  - 1.11. **Worksite** means the address nominated by the Customer to which the Materials are to be supplied by the Contractor.
2. **Acceptance**
  - 2.1. The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of Works under this Contract.
  - 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 amendments to the terms and conditions contained in this Contract may only be amended in writing and the consent of both parties.
  - 2.4. The Customer acknowledges that the supply of Works on credit shall not take effect until the Customer has completed a credit application with the Contractor and it has been approved with a credit limit established for the Customer.
  - 2.5. In the event that the supply of Works requested exceeds the Customer'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 to the Materials or Works supplied or given in good faith to the Customer, or the Customer's agent and is based on the Contractor's own knowledge and experience and shall be accepted without liability on the part of the Contractor. Where such advice or recommendations are not acted upon then the Contractor shall require the Customer or their agent to advise the Contractor 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. Where the Customer is a tenant (and therefore not the owner of the land and premises where the Works are to be carried out) then the Customer warrants that they have obtained the consent of the owner of the land and premises to carry out the Works on the owner's land and premises. The Customer acknowledges and agrees that they shall be personally liable for full payment of the Price for the Works provided under this Contract and to indemnify the Contractor against any claims or damages (including but not limited to those arising) in relation to the provision of the Works by the Contractor, except where such claim has arisen because of the negligence of the Contractor when undertaking the Works. Furthermore, the Customer agrees that they shall, upon request from the Contractor, provide evidence that:
    - (a) they are the owner of the land and premises upon which the Works are to be undertaken; or
    - (b) where they are a tenant, that they have the consent of the owner for the Works to be carried out on the land and premises.
  - 2.8. In the event that the Contractor is required to provide the Works urgently, that may require the Contractor's staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then the Contractor reserves the right to charge the Customer additional labour costs (penalty rates will apply at time and a half normal rates), unless otherwise agreed between the Contractor and the Customer.
  - 2.9. The Customer 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 7.2. In all such cases the Contractor shall notify the Customer in advance of any such substitution, and also reserves the right to place the Customer's order and/or Works on hold, as per clause 7.2 until such time as the Contractor and the Customer agree to such changes.
  - 2.10. The Contractor warrants that any structures to which the Materials will be charged requires investigation, disassembly and/or testing, all costs involved will be charged to the Customer irrespective of whether or not the repair goes ahead.
  - 2.11. 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 any other applicable provisions of that Act or any Regulations referred to in that Act.
3. **Authorised Representatives**
  - 3.1. The Customer acknowledges that the Contractor shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to the Contractor, that person shall have the full authority of the Customer to order any Works and/or to request any variation thereto on the Customer's behalf. The Customer 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 Works or variations requested thereto by the Customer duly authorised representative.
4. **Errors and Omissions**
  - 4.1. The Customer acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
    - (a) resulting from an inadvertent mistake made by the Contractor in the format 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 willful misconduct of the Contractor, the Contractor shall not be entitled to treat this Contract as repudiated nor render it invalid.
  - 4.3. In circumstances where the Customer is required to place an order for Materials, in writing, or otherwise as permitted by these terms and conditions, the Customer is responsible for supplying correct order information such as, without limitation, measurements and quantities, and placing an order for Materials (whether they are made to order Materials or not). (**Customer Error**). The Customer must pay for all Materials it orders from the Contractor notwithstanding that such Materials suffer from a Customer Error and notwithstanding that the Customer has not taken any steps to verify the delivery of such Materials. The Contractor is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Customers Errors.
5. **Change in Control**
  - 5.1. The Customer shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by the Contractor as a result of the Customer's failure to comply with this clause.
6. **Price and Payment**
  - 6.1. At the Contractor's sole discretion the Price shall be either:
    - (a) as quoted provided to the Contractor to the Customer in respect of Works performed or Materials supplied; or
    - (b) the Contractor's quoted Price (subject to clause 6.2) which shall be binding upon the Contractor provided that the Customer shall accept the Contractor's quotation in writing within thirty (30) days.
  - 6.2. The Contractor reserves the right to:
    - (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 unidentified difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite, crawl spaces, obscured building/Worksite defects, incorrect measurements, plans and/or specifications provided by the Customer, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, lack of access and utilities, remedial work, existing work, existing workmanship being of poor quality or non-compliant to the building code, hard rock or other barriers below the surface, pipe leak in walls, iron reinforcing rods in concrete or hidden pipes and wiring in walls, etc.) which are only discovered upon commencement of the Works; or
    - (d) as a result of an increase in the Contractor's costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Works, increases to the Contractor in the cost of labour or Materials or due to relevant industry awards (e.g. Worksite allowance and contractor safety) are outstanding.
  - 6.3. Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Customer shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor to adjust the Price and/or amounts. 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 of payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by the Contractor, which may be:
    - (a) on completion of the Works; or
    - (b) by way of progress payments in accordance with the Contractor's specified progress payment schedule. Such progress payment schedule may include the reasonable value of authorised variations and the value of any Materials delivered to the Worksite but not yet installed; or
    - (c) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
    - (d) a date specified on any invoice or other form as being the date for payment; or
    - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Contractor.
  - 6.6. Payment may be made by electronic on-line banking, eftpos, credit card (a surcharge will apply) or by any other method as agreed to between the Contractor and the Contractor.
  - 6.7. The Contractor may in its discretion allocate any payment received from the Customer towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer, the Contractor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Contractor, payment will be deemed to be allocated in such manner as preserves the maximum value of the Contractor's Purchase Money Security Interest (as defined in the Price) and to account for the event that the Contractor's claim against the Customer may be reduced or extinguished.
  - 6.8. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Customer 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 dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Contractor placing the Customer's account into default and the Customer must immediately pay the invoice in full. Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other Contract for the sale of the Materials. The Customer must pay GST, with respect to any materials, in writing, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
7. **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 the Contractor by reason of the event that the Contractor claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Customer to:
    - (a) make a selection; or
    - (b) provide the Customer 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 included in 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 Customer as a result of delivery being late. However, both parties agree that the Contractor shall make every endeavour to complete the Works 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 Customer, then the Contractor shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
8. **Risk**
  - 8.1. If the Contractor retains ownership of the Materials under clause 14 then:
    - (a) Once the Contractor is supplied with the Materials for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by the Contractor or the Contractor's nominated unit or person to the Customer's nominated delivery address (even if the Customer is not present at the address).
    - (b) where the Contractor is to both supply and install Materials then the Contractor shall maintain a Contract works insurance policy until the Works shall immediately pass to the Customer.
  - 8.2. Notwithstanding the provisions of clause 8.1 if the Customer specifically requests the Contractor to leave Materials outside the Contractor's premises for collection or to deliver the Materials to an unattended location then such materials shall remain the responsibility of the Customer. The Customer shall be responsible to ensure the Materials are insured adequately, or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Customer's expense.
  - 8.3. The Contractor shall be entitled to rely on the accuracy of any plans, specifications and/or information provided by the Customer. The Customer acknowledges and agrees that in the event that any such information provided by the Customer is inaccurate, the Contractor accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
  - 8.4. The Customer warrants that any structures to which the Materials are to be affixed are able to withstand the installation thereof and that any plumbing connections (including, but not limited to, pipes, couplings and valves) are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe plumbing or latent or undetectable issues such as leaks, gas or risk) the Contractor, or the Contractor's employees, reasonably form the opinion that the Customer's premises is not safe for the Works to proceed then the Contractor shall be entitled to delay the provision of the Works (in accordance with the provisions of clause 7.2 above) until the Contractor is satisfied that it is safe to proceed with the installation.
  - 8.5. The Customer acknowledges and accepts that:
    - (a) cracked drains generally indicate pipelines are not fully efficient (i.e. breakages, cracks, negative lift or tree root entry); the drain line cannot be repaired and replaced just by cleaning on its own and it shall be the Contractor's responsibility to advise the Customer against any such repair. In the event that the Customer requests the Contractor to use drain/pipe unblocking equipment (including but not limited to, CCTV camera or an electric jet), and the Contractor does not recommend the
9. **Worksite Access and Condition**
  - 9.1. 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 Customer but the responsibility for removal of the same is the Customer or the Customer's agent unless otherwise agreed.
  - 9.2. It is the intention of the Contractor and agreed by the Customer that:
    - (a) the Customer 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 Customer's responsibility to provide the Contractor, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities.
  - 9.3. The Customer agrees to be present at the Worksite when and as reasonably required by the Contractor and its employees, contractors and/or agents.
  - 9.4. **Worksite Inductions**
    - (a) in the event the Customer requires an employee or sub-contractor of the Contractor to undertake a Worksite induction during working hours, the Customer must be prepared to pay the hourly charges for that period. If an induction needs to be undertaken prior to the commencement date then the Customer 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 Customer and/or their agent must carry out a Worksite 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 Customer and/or third party acting on behalf of the Customer must at all times be accompanied by the Contractor.
10. **Insurance**
  - 10.1. The Contractor shall have public liability insurance of at least five million dollars (\$5m). It is the Customer's responsibility to ensure that they are similarly insured.
11. **Underground Locations**
  - 11.1. Prior to the Contractor commencing any work the Customer must advise the Contractor of the precise location of all underground services on the Worksite and the Contractor shall be responsible for the uncovering of the same. The Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, pumping mains, and any other services that may be on the Worksite.
  - 11.2. Whilst the Contractor will take all care to avoid damage to any underground services the Customer agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 11.1.
12. **Compliance with Laws**
  - 12.1. The Customer and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities, including but not limited to, the Work Health and Safety Act and safety laws (WHIS) relating or any other relevant safety standards or legislation pertaining to the Works.
  - 12.2. Both parties acknowledge and agree:
    - (a) to comply with the National Construction Code of Australia (NCC) and the Australian Standard 744A (products associated with building works and/or the intended use) and section 74AE (Chain of Responsibility) of the QBCC Act 1991, in respect of all workmanship and building products to be supplied during the course of the Works; and
    - (b) that the Works shall be carried out in accordance with any current relevant Australian/New Zealand Standards applicable.
  - 12.3. Where the Customer has supplied products for the Contractor to complete the Works, the Customer acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any other products used in the Works. 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.
  - 12.4. The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.
  - 12.5. Prior to commencement of any Works the Contractor shall carry a routine sootless test of the Worksite to ensure there are not any gas leaks in the existing pipework. In the event of such a discovery the Contractor where necessary will have the gas supply capped-off until the fault is found and repaired at the Customer's expense.
  - 12.6. The Customer acknowledges and accepts that in instances where the gas supply is turned off at the meter or bottles that the Contractor in order to carry out the soundness test that parts within a gas appliance may fail due to not being turned off and serviced for a long period of time including, thermostats, blocked pilot tubes, and SIT valves on pilot assemblies. Any costs associated with such an event shall be borne by the Customer.
  - 12.7. The Customer warrants that any existing plumbing, gas fitting and/or associated Works in or upon the Worksite that is subject to the Materials and/or Works are in compliance with regulations. The Contractor reserves the right to halt all Works (in accordance with the provisions of clause 7.2 above) if in their opinion the Worksite is unsafe and/or the current positioning of the unit is illegal due to not meeting the required clearances then the Customer will be informed of this and will be given a revised quotation or estimate to install the new appliance in a safe and legal position. Should the Customer not wish to proceed the Contractor will charge a standard fee for the time spent on Worksite based on the Contractor's quotation.
13. **Modern Slavery**
  - 13.1. For the purposes of this clause:
    - (a) the Modern Slavery Act 2018 (csh)
    - (b) "Modern Slavery", "Modern Slavery Statement" and "Reporting Entity" have the meanings given by the Act.
  - 13.2. If the Customer is a Reporting Entity, it shall comply with all of its obligations under the Act.
  - 13.3. Whether or not the Customer is a Reporting Entity or not, the Customer shall, in a reasonable endeavour, 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

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- the Contractor have undertaken suitable training to identify and report Modern Slavery.
- (c) use its reasonable endeavours to ensure that if at any time the Customer becomes aware of Modern Slavery practices in its operations and supply chains, the Customer 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 doing so; 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 reasonably requested by the Contractor:
- (i) concerning the Customer's compliance with the Act;
  - (ii) concerning the Customer'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.
- 13.4. 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 Customer.
- 13.5. The Customer warrants that any information supplied to the Contractor is true and accurate and may be relied upon for the purposes of the Act.
- 13.6. The Customer shall indemnify the Contractor against any loss or liability suffered by the Contractor as a result of the Customer's breach of this clause 13.
- 14. Title**
- 14.1. The Contractor and the Customer agree that ownership of the Materials shall not pass until:
- (a) the Customer has paid the Contractor all amounts owing to the Contractor; and
  - (b) the Customer has met all of its other obligations to the Contractor.
- 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 received by the Contractor.
- 14.3. It is further agreed that until ownership of the Materials passes to the Customer in accordance with clause 14.1:
- (a) the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Contractor on request;
  - (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
  - (c) the production of these terms and conditions by the Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor to make further enquiries;
  - (d) the Customer must not sell, dispose of or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand;
  - (e) the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as if so directed;
  - (f) unless the Materials have become fixtures the Customer irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials;
  - (g) the Contractor may recover possession of any Materials in transit whether or not the Contractor has a security interest in the Materials;
  - (h) the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Contractor;
  - (i) the Contractor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.
- 15. Personal Property Securities Act 2009 ("PPSA")**
- 15.1. In this clause the terms "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 Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials and collateral (account) – being a monetary obligation of the Customer to the Contractor for Works – that have previously been supplied and that will be supplied in the future by the Contractor to the Customer.
- 15.3. The Customer undertakes to:
- (a) register any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 15.3(a)(i) or 15.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;
  - (c) register and file a financing statement or financing change statement 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.
- 15.4. The Contractor and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 15.5. The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6. The Customer 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 Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8. The Customer shall unconditionally ratify any actions taken by the Contractor under clauses 15.3 to 15.5.
- 15.9. Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 16. Security and Charge**
- 16.1. In consideration of the Contractor agreeing to supply the Materials, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2. The Customer indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising the Contractor's rights under this clause.
- 16.3. The Customer irrevocably appoints the Contractor and each director of the Contractor as the Customer's true and lawful attorneys 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 Customer's behalf.
- 17. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")**
- 17.1. The Customer must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify the Contractor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in writing to the Contractor as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Contractor to inspect the Materials or to review the Works provided.
- 17.2. Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory guarantees and warranties including, without limitation, the statutory guarantee of fitness for purpose, 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. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.5. If the Customer is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of the CCA.
- 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 Customer has paid for the Materials.
- 17.7. The Contractor is not required to re-supply or pay the cost of re-supplying Materials under this clause or the CCA, but is unable to do so, then the Contractor may refund any money the Customer has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Customer which were not defective.
- 17.8. If the Customer is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Materials is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by the Contractor at the Contractor's sole discretion;
  - (b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Materials;
  - (c) otherwise negated absolutely.
- 17.9. Subject to this clause 17, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 17.1; and
  - (b) the Materials are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 17.10. Notwithstanding clause 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 Customer failing to properly maintain or store any Materials;
  - (b) the Customer providing Materials for any purpose other than that for which they were designed;
  - (c) the Customer continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Customer dealing with the Works by the Customer or any third party without the Contractor's prior approval;
  - (e) the Customer failing to follow any instructions or guidelines provided by the Contractor;
  - (f) fire, wear and tear, any accident, or act of God.
- 17.11. The Contractor makes no absolute disclaimer of non-defective Materials for return in which case the Contractor may require the Customer to pay handling fees of up to thirty percent (30%) 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 law to accept a return then the Contractor will only accept a return on the conditions imposed by that law.
- 17.13. Subject to clause 17.1, customised, or non-stockist items or Materials made or ordered to the Customer's specifications are not acceptable for credit or return.
- 18. Intellectual Property**
- 18.1. Where the Contractor has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Contractor, and shall only be used by the Customer at the Contractor's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.
- 18.2. The Contractor warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.
- 18.3. The Contractor warrants that it will not use any of the Contractor's designs, drawings, plans or products which the Contractor has created for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Contractor has created for the Customer.
- 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 Customer owes the Contractor any money, the Customer shall indemnify the Contractor from and against all costs and disbursements:
- (a) incurred; and/or
  - (b) that may be incurred and/or
  - (c) for which by the Customer would be liable;
- in regard to legal costs on a solicitor and own Customer 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 the Contractor's costs (if applicable), as well as bank dishonour fees.
- 19.3. Further to any other rights or remedies the Contractor may have under this Contract, if a Customer has made payment to the Contractor, and the transaction is subsequently reversed, the Customer shall be liable for the amount the reversed transaction, in addition to any further costs incurred by the Contractor under this clause, when the Contractor proves that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 19.4. Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Customer will be unable to make a payment which is an assignment for the benefit of its creditors; or
  - (b) the Customer has exceeded any applicable credit limit provided by the Contractor;
  - (c) the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 20. Cancellation**
- 20.1. Without prejudice to any other remedies the Contractor may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Works to the Customer. The Contractor will not be liable for the Customer's loss or damage if the Customer suffers because the Contractor has exercised its rights under this clause.
- 20.2. The Contractor may cancel any Contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Customer. On giving such notice the Contractor shall pay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3. In the event that the Customer cancels the delivery of Works the Customer shall be liable for all or any part of the direct and indirect loss or damage to the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4. Cancellation of orders for products made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 21. Privacy Policy**
- 21.1. All emails, documents, images or other recorded information held or used by the Contractor is Personal Information, as defined and referred to in clause 21.3, and therefore considered Confidential Information. The Contractor acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part III of the Act being Privacy Amendment (Notifiable Data Breaches) 2017 (the NDPR) 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 Customer's Personal Information, held by the Contractor that may result in serious harm to the Customer, the Contractor will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless such approval is not practicable.
- 21.2. Notwithstanding clause 21.1, privacy limitations will extend to the Contractor in respect of Cookies where the Customer 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) on its website which allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email Customer 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 Customer.
- If the Customer consents to the Contractor's use of Cookies on the Contractor's website and later wishes to withdraw that consent, the Customer
- may manage and control the Contractor's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser or installing an extension to the browser.
- 21.3. The Customer agrees for the Contractor to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B. occupation, driver's license details, electronic contact (email, Facebook or Twitter handles), mortgage insurance details or next of kin details) and other information (including application or credit applications, credit history) about the Customer in relation to credit provided by the Contractor.
- 21.4. The Customer agrees that the Contractor may exchange information about the Customer with the credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 21.5. The Customer consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit.
- 21.6. The Customer agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or
  - (b) obtaining a credit report or checking the Customer's credit, payment and/or status in relation to the provision of Works; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (d) to submit the solicitor of account outstanding in relation to the Works.
- 21.7. The Contractor may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Customer; and
  - (c) to provide information to the CRB may include:
- (a) Personal Information as outlined in 21.3 above;
  - (b) name of the credit provider and the Contractor is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) details concerning 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 Customer no longer has any overdue accounts and the Contractor has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of the Contractor, the Customer has been declared bankrupt or insolvent or has been declared bankrupt or insolvent; and
  - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 21.9. The Customer shall have the right to request (by e-mail) from the Contractor:
- (a) a copy of the Personal Information about the Customer retained by the Contractor; and
  - (b) that the Contractor correct any incorrect Personal Information; and
  - (c) that the Contractor does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 21.10. The Contractor will destroy Personal Information upon the Customer's request by e-mail or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 21.11. The Customer can make a privacy complaint by contacting the Contractor via e-mail. The Contractor will respond to any complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to whether the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 22. Service of Notices**
- 22.1. 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 the notice at the address of the other party, 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.
- 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.
- 23. Trusts**
- 23.1. If the Customer 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 Trust is a trust, the Customer agrees to give notice of the Trust to the Contractor as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
  - (b) the Customer has full and complete power and authority under the Trust to sue and defend the Trust and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
  - (c) 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 Customer 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.
- 24. Building Industry Fairness (Security of Payment) Act 2017**
- 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 Industry Fairness (Security of Payment) Act 2017 may apply.
- 24.2. Nothing in this Contract is intended to have the effect of contracting out of any of the provisions of the Building Industry Fairness (Security of Payment) Act 2017 of Queensland, except to the extent permitted by the Act where applicable.
- 25. General**
- 25.1. Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 25.2. The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the ability of either party to enforce that provision. If any provision of these terms and conditions shall be held void, illegal or unenforceable in its entirety, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.3. These terms and conditions and any Contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the Queensland courts in that state. These terms and conditions form part of the terms and conditions of the Customer (even if they form part of the Customer's purchase order).
- 25.4. Subject to clause 17, the Contractor shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 25.5. The Contractor may direct and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 25.6. The Customer cannot licence or assign without the written approval of the Contractor.
- 25.7. The Contractor may elect to subcontract out any part of the Works but shall not be bound from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.
- 25.8. The Customer agrees that the Contractor may amend their general terms and conditions to address future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or

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- otherwise at such time as the Customer makes a further request for the Contractor to provide Works to the Customer.
- 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, 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.
- 25.10. 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.
- 25.11. 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.