

# Terms and Conditions of Sale

## 1) Application

These T&Cs, and no terms and conditions of the Customer, will apply to any order for and any supply of Goods and/or Services by the Supplier to the Customer.

## 2) Order for Goods / Services

- 2.1 Any quotation by the Supplier does not constitute an offer to supply.
- 2.2 Unless otherwise stated by the Supplier, any quotation by the Supplier will remain valid for 30 days from the date of the quotation provided that the Supplier may withdraw or vary a quotation at any time prior to the Supplier's acceptance of an Order.
- 2.3 Any Order by the Customer to the Supplier and/or any acceptance of any Goods and/or Services by the Customer will constitute agreement to these T&Cs by the Customer.
- 2.4 No Order by the Customer will be binding on the Supplier unless the Supplier accepts the Order.
- 2.5 If the Supplier accepts an Order, the parties will have created a binding Contract and the Supplier will supply the Goods and/or Services to the Customer, and the Customer will pay the Price to the Supplier in accordance with the terms of the Contract (which will include these T&Cs), but the Contract will be subject to:
  - (a) the availability of the materials necessary to supply the Goods; and
  - (b) the Customer completing the Supplier's application for commercial credit and the Supplier agreeing to grant credit to the Customer (if the Customer is seeking credit terms).
- 2.6 The Customer is not entitled to cancel any Order or Contract and must pay to the Supplier any costs associated with the Customer purporting to cancel any Order or Contract.
- 2.7 The Customer must provide the Supplier with all information, instructions, reports, drawings, specifications and properties of Goods and/or Services, and all facts and things relevant to the Goods and/or Services and performance of the Supplier's obligations, at the time the Customer requests any quotation from the Supplier and prior to providing any Order to the Supplier.
- 2.8 If at any time the Supplier considers that any information, document or other thing provided by the Customer to the Supplier is not sufficient to enable the Supplier to supply the Goods and/or Services to the Customer in accordance with the Contract, the Customer must, at the Customer's cost, provide such further information, documents or assistance as the Supplier considers reasonably necessary.
- 2.9 The Customer must ensure the specifications and properties of Goods and/or Services stated in any Order by the Customer will be fit for the intended purpose of the Goods and/or Services.
- 2.10 The Supplier will be entitled to rely on the accuracy of any plans, specifications or other information provided by the Customer.
- 2.11 If there are any errors in any plans, specifications or other information provided by the Customer to the Supplier, the Supplier will, in addition to the Supplier's other rights under these T&Cs or at law, be entitled to vary the Price.
- 2.12 The Customer will be responsible for the quantity of any Goods and/or Services in any Order and the Supplier will not have any liability to the Customer if there is any excess or shortfall of the Goods and/or Services for the intended purpose.
- 2.13 The Supplier may cancel any Contract at any time prior to delivery of the Goods and/or Services with no liability other than to repay any amount of the Price paid in advance of the cancellation.

## 3) Price

- 3.1 Unless otherwise agreed by the Supplier in writing, the Price will be the Supplier's list price on the date of despatch of the Goods and/or Services and is subject to variation (whether before or after the acceptance of an Order or before or after the formation of a Contract or during the term of a Contract).
- 3.2 Unless otherwise agreed by the Supplier in writing, the Supplier may invoice the Customer for Goods and/or Services on the date the Supplier supplies the Goods and/or Services.
- 3.3 Unless otherwise stated by the Supplier in writing, the Price is exclusive of any delivery charges and exclusive of GST.
- 3.4 The Customer must not withhold, make deductions from, or set-off, payment of any money owed to the Supplier for any reason.
- 3.5 The Supplier may charge, in addition to the Price, any other fees, charges and surcharges that the Supplier notifies to the Customer from time to time.
- 3.6 The Price will be increased by the amount of any Carbon Costs which are applicable from time to time.

## 4) Delivery of Goods

- 4.1 If the Supplier agrees to deliver Goods, the Supplier:
  - (a) will charge delivery charges, demurrage, waiting time and other charges in the Supplier's price list or otherwise nominated by the Supplier from time to time;
  - (b) will endeavour to deliver the Goods to the Delivery Address on the Delivery Date; and
  - (c) may charge further delivery charges if the Customer is unable to receive delivery of the Goods at the Delivery Address or on the Delivery Date or in accordance with any other delivery arrangements.
- 4.2 The Supplier will only deliver Goods during the Supplier's usual business hours unless the Supplier agrees otherwise in writing.
- 4.3 The Supplier will not be liable for any delay in the delivery of Goods to the Delivery Address.
- 4.4 The Supplier may deliver Goods in separate installments.
- 4.5 The Customer will ensure a member of the Customer's Personnel will be at the Delivery Address on the Delivery Date to sign the delivery docket on the Customer's behalf.
- 4.6 The Supplier may deliver Goods to the Delivery Address regardless of whether there is anyone at the Delivery Address at the time of delivery.
- 4.7 The Customer agrees:
  - (a) the Supplier's responsibility for delivery of Goods will cease at the kerbside or public roadway frontage of the Delivery Address;
  - (b) the Customer must provide safe access for delivery of Goods including but not limited to providing safety measures such as traffic control; and
  - (c) the Supplier may refuse to deliver Goods, and return the Goods at the Customer's cost, if the Supplier or a member of the Supplier's Personnel considers it would be unsafe to deliver the Goods.
- 4.8 The signature of a member of the Customer's Personnel on the delivery docket will represent the Customer's acknowledgement that the Goods comply with the Contract and these T&Cs.
- 4.9 A certificate signed by a director or secretary of the Supplier in relation to delivery of the Goods will be prima facie evidence of the fact and the Customer will not object to the admissibility of such a certificate in any legal proceedings.
- 4.10 The Customer must inspect any Goods immediately on collection or delivery of the Goods.

## 5) Risk

- 5.1 If the Supplier agrees to deliver Goods, the Customer will be deemed to have accepted the Goods, and the risk in the Goods will pass to the Customer, immediately when the Goods are delivered to the Delivery Address regardless of whether there is anyone at the Delivery Address at the time of delivery.
- 5.2 If the Supplier agrees to supply the Goods on an ex-bin or ex-works basis, or the Customer otherwise agrees to collect the Goods, the Customer will be deemed to have accepted the Goods, and the risk in the Goods will pass to the Customer, immediately when the Goods are placed on any vehicle or means of conveyance.

## 6) Title

- 6.1 The Customer will not receive title to Goods until the Customer makes full payment of the Price and any other amounts payable to the Supplier.
- 6.2 Until title in the Goods passes to the Customer in accordance with these T&Cs, the Customer will:
  - (a) be only a bailee of the Goods;
  - (b) ensure the Goods are kept separate and identifiable from other goods;
  - (c) not grant any Security over the Goods to any third party;
  - (d) return any Goods to the Supplier immediately on request;
  - (e) authorise the Supplier or any agent of the Supplier to enter any land and premises owned, occupied or controlled by the Customer where the Goods are located and take possession of the Goods; and
  - (f) hold the proceeds from any sale or disposal of the Goods on trust for the Supplier, and the Supplier may repossess, retain, deal with and/or sell the Goods as the Supplier determines in the Supplier's absolute discretion, if the Customer does not pay the Price and any other amounts payable to the Supplier by the due date for payment or the Customer is the subject of Administration.
- 6.3 The Supplier may, for the purposes of exercising the Supplier's rights under clause 6.2, enter any premises owned, occupied or controlled by the Customer and remove the Goods including but not limited to by detaching or unfixing the Goods from any goods or land to which the Goods are attached or fixed.

## 7) Credit and Personal Property Securities

- 7.1 The Customer must make full payment of the Price and any other amounts payable to the Supplier before the Supplier supplies Goods and/or Services to the Customer unless the Supplier has granted credit terms to the Customer in which case the Customer must make full payment of the Price and any other amounts payable to the Supplier within 30 days after the end of the month in which the Supplier supplied the Goods and/or Services to the Customer (or such alternative period agreed by the Supplier in writing).
- 7.2 If the Supplier grants credit terms to the Customer, then to secure the punctual payment of all amounts owed by the Customer to the Supplier, the Customer grants to the Supplier:
  - (a) a security interest (as defined under the PPSA) over all present and after-acquired property of the Customer in relation to which the Customer can be a grantor of a security interest under the PPSA, whether or not the Customer has title to the property, including but not limited to all PPSA retention of title property (as defined under section 51F of the Corporations Act); and
  - (b) a fixed charge over all present and after-acquired property of the Customer in relation to which the Customer cannot be a grantor of a security interest under the PPSA.
- 7.3 The Customer agrees and acknowledges the Supplier may (without limiting the Supplier's other rights under these T&Cs, at law or otherwise) lodge caveats over the Customer's property and take any other action to secure and enforce the Supplier's Security Interest.
- 7.4 The Customer must reimburse the Supplier for the full amount of any bank or other fees associated with any dishonoured payments or cheques and any legal, debt recovery or other expenses incurred by the Supplier associated with any action by the Supplier to recover money from the Customer.
- 7.5 The Customer:
  - (a) agrees with the Supplier that neither the Customer, nor the Supplier, will disclose information of the kind specified in section 275(1) of the PPSA (except in the circumstances required by sections 275(7)(b) to (e) of the PPSA);
  - (b) agrees that, to the extent permitted under section 115(1) of the PPSA, the following provisions of the PPSA do not apply: sections 95, 118, 121(4), 125, 130, 132(3)(d), 135, 138B(4), 142 and 143;
  - (c) agrees that, to the extent permitted under section 115(7) of the PPSA, the following sections of the PPSA do not apply: sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137;
  - (d) acknowledges that the Supplier may, at the Customer's cost, register one or more financing statements in relation to the Supplier's Security Interest or any other Security;
  - (e) waives, if permitted under the PPSA, the Customer's right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement; and
  - (f) will not, without prior written notice to the Supplier, change the Customer's name or initiate any change to any documentation registered under the PPSA.
- 7.6 The Security Interest will immediately become enforceable (whether or not the amounts owed by the Customer to the Supplier have become payable) if an Event of Default occurs, without the need for any demand or notice under a document, and the Supplier may appoint a Receiver to property the subject of the Security Interest (and fix the Receiver's remuneration) or exercise any power exercisable by a Receiver even if a Receiver has not been appointed.

## 8) Force Majeure

The Supplier will not be liable to the Customer for any failure to perform, or delay in performing, the Supplier's obligations under these T&Cs if the failure or delay is due to any cause beyond the Supplier's reasonable control and if any such failure or delay continues for a period of 14 days the Supplier may terminate any affected Contract.

## 9) Confidential Information and Intellectual Property

- 9.1 The Customer will not use, or disclose, any Confidential Information disclosed to the Customer.
- 9.2 All Intellectual Property Rights in all designs, drawings, technical information and documents created by the Supplier in relation to the Goods and/or Services will remain with the Supplier and will not be assigned to the Customer and no supply of Goods and/or Services to the Customer will grant to the Customer any Intellectual Property Rights in respect of the Goods and/or Services or such designs, drawings, technical information or documents.
- 9.3 If the Supplier supplies any designs, drawings, technical information or documents to the Customer as part of the Goods and/or Services, the Supplier grants the Customer a non-exclusive, non-transferrable, right to use the designs, drawings, technical information and documents strictly and only for the purposes of the Customer's use of the Goods and/or Services.
- 9.4 The Customer warrants that the Supplier's use of any designs, instructions or documents provided by the Customer to the Supplier will not infringe the Intellectual Property Rights of any other party.

## 10) Approvals

The Customer must, at the Customer's expense, obtain all Approvals necessary for and incidental to the supply of the Goods and/or Services.

## 11) Security

The Supplier will not be required to provide a bank guarantee or any other form of Security and the Customer will not be entitled to retain any retention money from the Price for any reason.

## 12) Warranties

- 12.1 The Supplier does not warrant the Goods and/or Services are fit for any purpose whether or not made known to the Supplier or any member of the Supplier's Personnel.
- 12.2 The Supplier excludes all express and implied conditions and warranties in relation to the Goods and/or Services except those conditions or warranties that cannot be excluded by law and the Supplier's liability under any such conditions or warranties is limited to, at the Supplier's option, arranging to replace or repair the Goods and/or the outcome of the Services or resupplying the Goods and/or Services.
- 12.3 Nothing in these T&Cs are intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or any Fair Trading Act except to the extent permitted by such Acts.

## TERMS AND CONDITIONS OF SALE

### 13) Liability

- 13.1 The Supplier's liability for any Liability or Claim in relation to these T&Cs, any Contract, and any supply of Goods and/or Services (whether under statute, contract, tort, negligence or otherwise) will be limited to the amount of the Price paid by the Customer to the Supplier.
- 13.2 The Supplier will not be liable to the Customer for any Liability or Claim of any kind arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any indirect or consequential loss (including but not limited to any loss of actual or anticipated profits, revenue, savings, production, business, opportunity, access to markets, goodwill, reputation, publicity, or use) or any remote, abnormal or unforeseeable loss or any similar loss whether or not in the reasonable contemplation of the parties.

### 14) Release and Indemnity

- The Customer indemnifies the Supplier and each member of the Supplier's Personnel from and against any Liability or Claim arising directly or indirectly in relation to:
- the accuracy of all information provided by the Customer to the Supplier in relation to the Services, the Delivery Address or any other matters;
  - the Customer's breach of these T&Cs or any Contract;
  - the negligence or wilful misconduct of the Customer or any member of the Customer's Personnel;
  - the Supplier or any member of the Supplier's Personnel delivering the Goods in accordance with the Customer's instructions;
  - the Supplier or any member of the Supplier's Personnel entering the Delivery Address;
  - damage to the property of the Customer or any third party during any delivery of Goods;
  - any spillage, breakage or contamination of Goods during any transport or delivery;
  - the Goods and/or Services not being fit for any particular purpose;
  - any tests in relation to Goods and/or Services;
  - the Customer or any member of the Customer's Personnel directly or indirectly causing any delay in the supply of any Goods and/or Services;
  - the Supplier having to resupply the Goods and/or Services, or undertake any rework, as a result of the actions or omissions of the Customer or any third party;
  - the Customer or any member of the Customer's Personnel refusing to accept any delivery;
  - the Customer or any member of the Customer's Personnel purporting to cancel any Order or Contract; and
  - any proceedings, claims and demands in relation to any secured property.

### 15) Termination

- The Supplier may immediately terminate, or suspend the performance of, any Contract and the Customer must immediately pay any money owed to the Supplier if:
- the Customer breaches a term of these T&Cs or any Contract and does not remedy the breach within 7 days of receiving a notice from the Supplier requiring the Customer to do so;
  - the Customer breaches a term of these T&Cs or any Contract which is not capable of remedy;
  - there is any change in the Control of the Customer; or
  - an Administration occurs in relation to the Customer.

### 16) Definitions

- In these T&Cs:
- "Administration" means any of the following, or any analogous, events:
- any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator to the Customer or to the whole or any part of the Customer's assets, operations or business;
  - any person, or agent of a person, who holds any Security takes possession of any of the Customer's property (including but not limited to seizing the Customer's property within the meaning of section 123 of the PPSA);
  - a court or other authority enforces any judgment or order against the Customer for the payment of money or the recovery of any property;
  - the Customer disposes of the whole or any part of the Customer's assets, operations or business other than in the ordinary course of business;
  - the Customer ceases, or threatens to cease, carrying on business;
  - the Customer is unable to pay the Customer's debts as the debts fall due; or
  - any step is taken for the Customer to enter into any arrangement or compromise with, or assignment for the benefit of, the Customer's creditors or any class of the Customer's creditors.
- "Approvals" means all approvals, authorisations, permits, consents, determinations and licences which are issued, or required to be issued, by any Authority to permit the full and proper performance of the Supplier's obligations under these T&Cs;
- "Authority" means any government or governmental, semi-governmental, administrative or judicial body, tribunal, department, commission, authority, agency, minister, statutory corporation, instrumentality or entity;
- "Carbon Costs" means the costs of the Supplier or a related body corporate acquiring any emissions permits or carbon offsets required under any emissions trading legislation or paying any carbon tax in relation to supply of the Goods and/or Services to the Customer;
- "Claim" means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;
- "Confidential Information" means information, whether in visual, oral, documentary, electronic, machine-readable, tangible, intangible or any other form, relating to the Supplier or any related entity of the Supplier including but not limited to any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter;
- "Contract" means a contract formed as a result of the acceptance of an Order by the Supplier;
- "Control" has the meaning set out in the Corporations Act;
- "Corporations Act" means the Corporations Act 2001 (Cth);
- "Customer" means the customer set out in any quotation, offer or other document provided by the Supplier (or, in the absence of such information, the customer who placed the Order);
- "Delivery Address" means the address for the delivery of the Goods and/or Services in a Contract;
- "Delivery Date" means the date for the delivery of the Goods and/or Services in a Contract;
- "Event of Default" means any of the following, or any analogous, events:
- the Customer fails to pay any amount due and payable when the amount is due and payable;
  - the Customer fails to comply with any obligations under any document;
  - any representation, warranty or statement by the Customer in connection with any document is untrue or misleading (whether by omission or otherwise); or
  - the Customer becomes subject to Administration;
- "Goods" means the goods in a Contract;
- "Intellectual Property Rights" means any present or future rights conferred by statute, common law or equity in any part of the world in relation to any confidential information, copyright, trade marks, service marks, designs, patents, circuit layouts, plant varieties, business names, domain names, inventions, trade secrets or other results of intellectual activity in any industrial, commercial, scientific, literary or artistic fields;
- "Liability" means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees);
- "Order" means any written or verbal order by the Customer to the Supplier for Goods and/or Services;
- "Personnel" means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party;
- "PPSA" means Personal Property Securities Act 2009 (Cth);
- "Price" means the price of the Goods and/or Services as nominated by the Supplier from time to time;
- "Security" means:
- a security interest that is subject to the PPSA;
  - any other mortgage, pledge, lien or charge; or
  - any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property

"Security Interest" means the Supplier's security under clause 7.2;

"Services" means the services in a Contract and any services associated with the Goods;

"Supplier" means Adabri Masonry Pty Ltd (ABN 31 009 687 521); and

"T&Cs" means the terms of these Terms and Conditions and the terms of the Special Conditions (and if there is any inconsistency between the terms of these Terms and Conditions and the terms of the Special Conditions, then the terms of the Special Conditions will take precedence).

### 17) Miscellaneous

- 17.1 The parties agree:
- no Contract will create any partnership, joint venture, agency or relationship of employment between the parties;
  - these T&Cs or any Contract may only be amended with the Supplier's express written agreement;
  - any waiver by the Supplier must be express and in writing;
  - the Supplier's rights under these T&Cs or any Contract do not exclude any other rights of the Supplier;
  - no Contract will be a sale by sample;
  - in the event of any dispute, the Supplier's records will be conclusive evidence;
  - the actions of any person claiming to have the Customer's authority will bind the Customer to the extent permitted by law;
  - if any provision of these T&Cs or any Contract is unenforceable, the provision will be severed and the remaining provisions will continue to apply;
  - the Customer must immediately provide written notice to the Supplier if there is any change in the Control of the Customer;
  - the Supplier may assign any rights or benefits under any Contract or these T&Cs or any Contract to any third party;
  - the Customer may only assign any rights or benefits under any Contract or these T&Cs or any Contract with the Supplier's prior written consent; and
  - these T&Cs and any Contract will be governed by the laws of, and the parties submit to the jurisdiction of the courts of, the state in which the Goods and/or Services are delivered.
- 17.2 In these T&Cs:
- the headings will not affect interpretation;
  - the singular includes the plural and vice versa;
  - any other grammatical form of a word or expression defined in these T&Cs has a corresponding meaning;
  - a reference to a document includes the document as novated, altered, supplemented or replaced;
  - a reference to a party includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
  - a reference to a person includes a natural person, body corporate, partnership, trust, association or any other entity;
  - a reference to a statute, ordinance, code or law includes regulations, rules and other instruments under the statute, ordinance, code or law and any consolidations, amendments, re-enactments or replacements;
  - a word or expression defined in the Corporations Act has the meaning given to the word or expression in the Corporations Act;
  - the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
  - any agreement, presentation, warranty or indemnity by two or more parties binds those parties jointly and severally;
  - any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
  - a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these T&Cs; and
  - if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.

## SPECIAL CONDITIONS - MASONRY PRODUCTS

### 1) Supply of Masonry Products

- 1.1 If the Supplier agrees to supply masonry products to the Customer:
- the Supplier acknowledges that the manufacture and delivery of Goods could take up to 12 or more weeks from the date the Supplier accepts the Customer's Order; and
  - the Supplier's crane trucks will not lift Goods over fences.
- 1.2 Any return of Goods by the Customer will be at the Supplier's discretion and subject to:
- the Customer providing full details of the Customer's claim within 7 days of the date of the delivery or collection of the Goods;
  - the Customer making payment of delivery and all other costs associated with the return of the Goods; and
  - any policies and procedures of the Supplier in relation to the return of Goods.

### 2) Colour

- The Customer acknowledges:
- the raw materials used to manufacture masonry products are natural products and subject to variations;
  - masonry products may also contain iron stone which could cause rust stains in finished products;
  - the colour, texture, appearance and quality of masonry products in any brochure, display or other promotional material are indicative only;
  - the colour, texture or appearance of masonry products might not match the selections any order;
  - masonry products should be viewed before purchase and all required products should be ordered at the same time to reduce the risk of variations;
  - masonry products should be installed from pallets in rotation to help ensure even blending;
  - the Supplier does not represent, warrant or guarantee that the colour, texture, appearance or quality of concrete masonry products will match the selections in any Order or Contract; and
  - the Customer is responsible for checking colour variation in masonry products before installation.

### 3) Pallets

- The Customer acknowledges all pallets remain the property of the Supplier and the Customer will advise the Supplier when the pallets are ready for collection in accordance with any requirements of the Supplier.

### 4) Silica

- The Customer acknowledges that concrete masonry products contain silica and acknowledges that silica is a dangerous good and will obtain advice in relation to the handling of silica.

### 5) Seconds

- 5.1 The Customer acknowledges that seconds and/or redundant Goods (including but not limited to any Goods that the supplier supplies as seconds) ("Seconds"):
- are not graded as first quality;
  - may have variations in colours, textures, sizes and shapes and other irregularities; and
  - may be broken, cracked, damaged or defective.
- 5.2 The Customer must thoroughly inspect Seconds prior to purchase to ensure the Customer is satisfied with the nature and condition of the Seconds and to ensure the Seconds meet the Customer's needs and are fit for the intended application.
- 5.3 The Customer releases the Supplier from any Claim in relation to Seconds and cannot return the Seconds for any reason.
- 5.4 The Supplier will not provide refunds, replacements or credit in relation to Seconds in any circumstances.

## SPECIAL CONDITIONS - DESIGN AND/OR INSTALL OF MASONRY PRODUCTS

### 6) Design and/or Installation of Masonry Products - Application

If the Services include:

- (a) services for the installation of any Goods ("Works"), the provisions of clauses 7 to 17 of these Special Conditions will apply; and/or
- (b) services for the design of any Goods or Works ("Design Services"), the provisions of clauses 7, 8, 9, 10 and 17 of these Special Conditions will apply.

### 7) Information

In addition to providing the information required under the T&Cs, the customer must provide the supplier with all geotechnical and survey information relevant to the Goods and/or Services at the time the Customer requests any quotation from the Supplier and prior to providing any Order to the Supplier.

### 8) Quantities

The Customer agrees:

- (a) any quantities in any design, drawing or quote by the Supplier will be estimates only;
- (b) the Supplier will have no liability for any difference between the quantities of goods set out in a design, drawing or quote and the actual quantities of goods required for the purposes of the intended outcome of the works in the design, drawing or quote; and
- (c) the Customer acknowledges the Supplier advises the Customer to engage an independent assessment of quantities.

### 9) Comments

Unless otherwise agreed in writing, the Customer will provide written comments to the Supplier in relation to any drawings or designs submitted by the Supplier to the Customer within 3 days of the date of submission.

### 10) Warranties

The Customer warrants that:

- (a) the Supplier will be able to provide the Works in an orderly and continuous sequence and does not need to undertake any work in stages;
- (b) the Supplier will have uninterrupted access to the Delivery Address;
- (c) the Delivery Address is suitable for the supply of the Goods and Works;
- (d) all other works on or adjacent to the Delivery Address will be completed before the Supplier commences the Works;
- (e) the Customer is aware of, and have informed the Supplier of, all information relating to the risks, contingencies and other circumstances relevant to the supply of the Goods and Works to the Delivery Address; and
- (f) the Customer is satisfied with the suitability and fitness for purpose of the Goods and Works for their intended use.

### 11) Exclusions

11.1 The Price does not include provision for:

- (a) any member of the Supplier's Personnel to work any overtime, holidays or rostered days off;
- (b) resupplying any Goods or Works arising due to the acts or omissions of the Customer or any third party;
- (c) addressing latent conditions at the Delivery Address; or
- (d) addressing any underground conditions at the Delivery Address.

11.2 The Supplier is not responsible for any goods, services or works, or the outcome of any goods, services or works supplied by any third party who is not a member of the Supplier's Personnel.

### 12) Schedule

12.1 Any schedule, timetable, deadline or completion date for the supply of the Goods and Works will be an estimate only.

12.2 The Supplier will be entitled to a reasonable extension of time for the performance of any obligations under any Contract in the event of any:

- (a) variation of the scope of Goods or Works;
- (b) the actual quantity of Goods or Works being greater than the quantity in the design, drawing or quote;
- (c) any cause that was not or could not have been reasonably foreseen by the Supplier;
- (d) change in law;
- (e) act or omission of the Customer or any member of the Customer's Personnel that affects the supply of the Goods or Works;

(f) a breach of these T&Cs or the Contract by the Customer;

(g) suspension under these T&Cs;

(h) delays of any Authority;

(i) site conditions at the Delivery Address;

(j) inclement weather; or

(k) industrial conditions.

12.3 The Customer will pay the Supplier all reasonable costs incurred by the Supplier (which may include, without limitation, additional site establishment, labour, material costs and an allowance for overhead and profit) as a result of any of the causes set out in clause 12.2.

### 13) Variations

13.1 If the Customer wishes to request a variation to the scope of the Goods or Works, the Customer must provide written notice of the variation to the Supplier setting out all information relevant to the variation and all information reasonably required by the Supplier.

13.2 If the Supplier considers that:

- (a) the quantity or scope of the Goods or Works in the design, drawing or quotation is insufficient; or
- (b) the supply of the Goods and/or Services is affected, obstructed or delayed by any cause set out in clause 12.2, or any cause outside of the reasonable control of the Supplier or any cause within the reasonable control of the Customer, the Supplier may provide written notice of a variation to the Customer.

13.3 If a party provides notice of a variation in accordance with clauses 13.1 or 13.2, the Supplier:

- (a) may suspend the supply of the Goods or Works; and
- (b) will notify the Customer whether or not the Supplier can effect the variation and, if the Supplier can effect the variation, the additional Price for the Supplier to effect the variation (which may include, without limitation, additional site establishment, labour, material costs and an allowance for overhead and profit).

13.4 If the Supplier provides a notice to the Customer in accordance with clause 13.3, the Customer must, within 3 days of receipt of the notice, provide written notice to the Supplier stating whether or not the Customer wishes the Supplier to proceed with the requested variation.

13.5 If the Supplier provides notice to the Customer that the Supplier cannot effect a variation, or the Customer does not provide notice in accordance with clause 13.4 stating that the Customer wishes the Supplier to proceed with a variation, the Supplier may:

- (a) complete the supply of the Goods and/or Works in accordance with the Contract and the Customer must pay the Supplier the Price for the Goods and/or Works in accordance with the Contract;
- (b) suspend the supply of the Goods and/or Works and the Customer must pay the Supplier the Price for the Goods and/or Works supplied or manufactured by the Supplier prior to the suspension of the Contract; or
- (c) terminate the Contract and the Customer must pay the Supplier the Price for the Goods and/or Works supplied or manufactured by the Supplier prior to the termination of the Contract.

### 14) Setting Out

The Customer will, at the Customer's expense, supply the information, data and survey marks to enable the Supplier to set out the Works.

### 15) Care of the Goods and/or Services

The Customer will be responsible for the care of the Goods and the Works at the Delivery Address.

### 16) Testing

The Customer will pay any costs associated with opening up for inspection any part of the Goods and/or Works for inspection or testing unless the Customer proves that the Supplier has caused the need for such actions as a result of the Supplier's breach of these T&Cs.

### 17) Payment for Design and/or Installation Services

The Customer must make full payment of the Price for any Design Services and Works and any other amounts payable to the Supplier before the Supplier supplies such Design Services or Works to the Customer unless the Supplier has granted credit terms to the Customer in which case, unless otherwise agreed in writing:

- (a) the Supplier will invoice the Customer for such Design Services or Works at the conclusion of each 30 day period after the commencement of the Design Services or Works and on the completion of the Design Services or Works; and
- (b) the Customer will pay the Supplier's invoices for such Design Services or Works within 30 days of the date of such invoices.

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