

## **1 Reading Guide**

- 1.1 Accepted Order means any actual supply of Materials or Services by the Supplier to the Client which in the case of Materials shall occur when Risk has passed to the Client.
- 1.2 ACL means the Australian Consumer Laws.
- 1.3 Approved Payment Method means a payment by cash, cheque, bank cheque, electronic banking or credit card.
- 1.4 Cancellation means the cancellation of an Order after it has been accepted by the Supplier;
- 1.5 Consequential Loss means the loss or expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay or any consequential special or indirect loss or damage whether or not the possibility of potential extended loss or damage was known or foreseeable and whether arising from a claim under indemnity, contract, tort (excluding negligence) statute or otherwise.
- 1.6 Credit Account means the credit facility given by the Supplier to the Client (if any).
- 1.7 Materials means all materials or services supplied by the Supplier to the Client at the Client's request from time to time (where the context so permits the terms 'Materials' or 'Services' shall be interchangeable for the other) as part of the Works.
- 1.8 Order means a request, howsoever made, by the Client to the Supplier for the supply for Materials or Services;
- 1.9 PPSA means the Personal Properties Securities Act 2009 and PPSR means the Register created by that Act.
- 1.10 Price means the amount agreed to be paid to the Supplier by the Client for the Order.
- 1.11 Supplier means Arrow Concrete Cutting Pty Ltd ACN 110 478 389 its successors and assigns or any person acting on behalf of and with its authority.
- 1.12 Supply Terms means these terms and conditions and any other terms and conditions of quotation, hire or supply notified by the Supplier to the Client (whether on an invoice, quotation, order form, hire form, through the Supplier's website, docket or otherwise) or supply agreement (howsoever described) and any document said to be part of these terms and conditions.
- 1.13 Works means all works, Materials or Services supplied by the Supplier to the Client at the Client's request from time to time (where the context so permits the terms 'Materials' or 'Services' shall be interchangeable for the other) as part of the Order.
- 1.14 Worksite means the place that the Works are to be carried out.

## **2 Orders and Price**

- 2.1 All Orders are subject to these Supply Terms and the Client shall be bound by these Supply Terms on placing an Order or when an Accepted Order occurs. These Supply Terms shall, in the absence of a specific separate contract, override any terms that the Client may seek to impose on the Supplier.
- 2.2 Any Order is an offer by the Client and is not binding on the Supplier until it is accepted in writing by the Supplier or an Accepted Order has occurred.
- 2.3 The Supplier may give written notice of Cancellation to the Client at any time before there is an Accepted Order. On the giving of such notice the Supplier shall repay to the Client any money paid by the Client for the Materials or Services but shall not be liable for any loss or damage whatsoever suffered by the Client arising from the Cancellation.
- 2.4 If the Client gives a written notice of Cancellation to the Supplier the Client shall be liable to the Supplier for its Consequential Loss if the Cancellation is accepted by the Supplier.
- 2.5 The Supplier will not accept the Client's Cancellation where the Materials are to be made, developed or grown to the Client's specifications, or for non-stocklist items, once the Order has been placed.

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- 2.6 The Supplier may by written notice vary the Price if:
- (a) the Client varies the Work;
  - (b) where additional Works become necessary due to matters that are only discovered on the commencement of the Works such as latent Worksite defects like the presence of rock or iron re-enforcing rods in concrete, delays or problems caused by third parties on the Worksite, access to the Worksite or the like; or
  - (c) an increase in the costs of the Supplier's Personnel or Materials specifically purchased for the Works.
  - (d) if the Works include drilling and the holes require steel reinforcement.

**3 Payment**

- 3.1 If the Client has a Credit Account with the Supplier, in the absence of any other arrangement, the Client authorises the Supplier to charge the Price to the Credit Account.
- 3.2 If the Client does not have a Credit Account with the Supplier then the Client must pay the Price before the Accepted Order is completed by an Approved Payment Method.
- 3.3 The Supplier may at its discretion ask the Client to pay the Price by instalment (including a non refundable deposit) and if so those payments must be paid at the time stipulated by the Supplier by an Approved Payment Method.
- 3.4 Where the Client has requested the Supplier to charge the Price to a credit card then the Client authorises the Supplier to charge any monies payable under these Supply Terms and additionally a surcharge of 1.5% on those monies to the credit card without further authority.
- 3.5 If the Client fails to make any payment to the Supplier by the due date the Supplier may charge interest at a rate of 5% above the Reserve Bank Cash Rate calculated daily and compounded monthly but in no circumstances will the interest charge exceed 20% per annum
- 3.6 All costs and expenses associated with recovering any monies owed to the Supplier by the Client under these Supply Terms (including but not limited to legal costs on an indemnity basis) are to be paid by the Client to the Supplier.
- 3.7 If any payment is made by the Client to the Supplier and that payment is subsequently dishonoured the Client shall immediately pay that amount to the Supplier together with any additional costs or expenses incurred by the Supplier as a consequence of the payment being dishonoured.
- 3.8 The Order may specifically vary when and how the Price must be paid by the Client to the Supplier and may at the Supplier's discretion allow the Client to retain an agreed amount that is to be paid on the later of the completion of the Works or any defects that the Parties have agreed that the Supplier will rectify having been rectified.

**4 The Works and the Worksite**

- 4.1 The Client shall ensure that the Worksite is ready for the Works to commence when the Supplier is notified by the Client that it may start the Works and unless otherwise agreed have clearly marked out in waterproof crayon the line of cut, the position of the holes or the like;
- 4.2 The Client shall ensure that the Supplier has clear and free access to the Worksite at all times to enable it to undertake the Works with supply of water at mains pressure and electricity within reasonable distance of the Worksite (to be supplied at the Client's cost).
- 4.3 If the Worksite is above ground level then the Client must provide access to elevators, cranes or labour (at the Client's cost) to carry the equipment to the Worksite.
- 4.4 If access to the Worksite is required through or from a neighbouring property then the Client is responsible for obtaining their consent and the Supplier shall proceed with the Works on the basis that the consent has been obtained.

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- 4.5 The Client, unless agreed otherwise in writing, must obtain the consent, permit or approval of any relevant Government authority and keep the Supplier safe and harmless from any failure to obtain any such consent, permit or approval or any deficiency in them if obtained.
- 4.6 The Client must not allow unauthorised third parties to enter the Worksite.
- 4.7 In carrying out the Works the Client acknowledges that damage beyond the control of the Supplier may occur and that in the absence of negligence by the Supplier the Supplier is not liable for any damage that may occur to the Worksite or any things or structures on the Worksite.
- 4.8 The Client must ensure that the Worksite and access to the Worksite are safe and suitable for the weight of vehicles and equipment that will be used by the Supplier as part of the Works.
- 4.9 Prior to the Supplier commencing any Work the Client must advise the precise location of all underground services (including but not limited to electrical services, gas services, sewer services, pumping services, seal connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables or public mains and any other services that may be on the Worksite) on the Worksite and clearly mark and identify their location.
- 4.10 Whilst the Supplier will take all care to avoid damage to any underground services the Client agrees to indemnify the Supplier in respect of all and any liability claims, loss, damage, costs and fines and resulting damage to services not precisely located and notified.
- 4.11 The Client is responsible for the cleaning and removal of any concrete slurry generated by the Works.
- 4.12 The Client must advise the Supplier of the precise location of any asbestos or hazardous materials on the Worksite and clearly mark and identify their location.
- 4.13 The Client acknowledges that the commencement or the completion of the Works may be delayed by inclement weather or conditions arising from inclement weather and that any commencement or completion dates for the Works given to the Client by the Supplier are an estimate only.
- 4.14 The Client acknowledges that the Supplier is not liable for any Consequential Loss caused by any delays caused by matters beyond its control such as weather, Worksite access, equipment failure or delays or problems caused by other third parties working on the Worksite.
- 4.15 If the Client requests the Supplier to deliver the Materials to the Worksite then unless the Supplier has agreed to include the cost of the delivery in the Price then the Client shall pay the Supplier's then stated cost of delivery.
- 4.16 Any date or time specified by the Supplier for delivery is an estimate only and the Supplier shall not be liable to the Client for late delivery and the Client shall have no rights to refuse delivery.
- 4.17 The Client must give the Supplier safe and adequate access to the Worksite for the delivery and if needed the equipment needed to unload the Materials if the Supplier's vehicle is not suitable and shall indemnify the Supplier for any Consequential Loss as a result or failure to provide such access or equipment.
- 4.18 If delivery of Materials sold by the Supplier to the Client cannot be effected then at the Supplier's sole discretion the Supplier may store the Materials and charge the Client a storage fee equal to 10% of the Price per week until the Materials have been collected by the Client and if not collected within 3 months the Materials shall be deemed abandoned and become the property of the Supplier.

**5 Risk**

- 5.1 If the Supplier retains ownership of the Materials under Clause 10 then where the Supplier is:

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- (a) supplying Materials only, the risk in the Materials shall immediately pass to the Client on delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
    - (i) the Client or the Client's nominated carrier takes possession of the Materials; or
    - (ii) the Materials are delivered by the Supplier to the Client's nominated delivery address (even if the Client is not present at the address);
  - (b) to both supply and install Materials then the Supplier shall maintain a contract works insurance policy until the Works are completed. Upon Completion of the Works all risk for the Works shall immediately pass to the Client.
- 5.2 Notwithstanding the provisions of Clause 5.1 if the Client specifically requests the Supplier to leave Materials outside the Supplier's premises for collection or to deliver the Materials to an unattended location then the Materials shall be left there at the Client's risk.
- 5.3 The Client acknowledges and accepts the risk that Materials may:
- (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time;
  - (b) expand, contract or distort as a result of exposure to heat, cold, either;
  - (c) mark or stain if exposed to certain substances; and
  - (d) be damaged or disfigured by impact or scratching.
- 5.4 Where the Client has supplied Materials for the Supplier to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose, quality and any faults inherent in the Materials. The Supplier shall not be responsible for any defects in the Works, any loss or damage to the Materials (or any part of them), howsoever arising from the use of materials supplied by the Client.
- 5.5 If the Works include any concreting services then:
- (a) detailed drawings of any services that will be embedded in the concrete are to be provided to the Supplier prior to the start of any Works and the risk of any damage to the services is the Client's risk;
  - (b) the Client acknowledges that variations of colour and texture are inherent in concrete. The Supplier shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture between different batches of product;
  - (c) the Client acknowledges that the Works will generate concrete slurry which can stain, discolour and contaminate the Worksite and things that the concrete slurry may come into contact with and that it is the Client's responsibility to contain the concrete slurry and accept the risk of any damage that it may cause;
  - (d) the Supplier gives no warranty as to the length of time the curing process will take as that may be affected by hot or inclement weather or against cracking that may occur naturally in the concrete such as hairline cracking of paving and grout or against damage caused by contact with chemicals, solvents, oils or any other substances or the affects of hot or inclement weather.
  - (e) the Client acknowledges and agrees that it is their responsibility to organise and be liable for all costs associated with protecting the concrete and shall take all reasonable precautions to protect against destruction or damage by way of vandalism. In the event that the concrete is destroyed or damaged due to vandalism then the cost of repair or replacement shall be borne by the Client;
  - (f) the Supplier shall not be liable for any defect in the Works if the Client does not follow the Supplier's recommendations about the concrete including to water the concrete for periodically to limit the risk of possible cracking due to weather conditions, to not

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allow foot traffic, vehicles or furniture or other things on the concrete for a minimum of forty-eight (48) hours but preferably seven (7) days.

- (g) where the Supplier gives advice or recommendations to the Client, or the Client's agent, regarding the suitability of the Worksite for the laying of concrete slabs, foundations or similar works and such advice or recommendations are not acted upon then the Supplier shall require the Client or their agent to authorise commencement of the Works in writing. The Supplier shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works;
  - (h) the Client shall supply an area suitable for washing out the Supplier's equipment and for depositing all unused concrete and concrete slurry;
  - (i) at the Completion of the Works the Client and the Supplier shall jointly measure the concreting if appropriate and if the Client fails to attend the Supplier shall forward its written results to the Client. If the Client does not object to the results in writing within seven (7) days (and if it does Clause 16 shall apply) the Works shall be deemed to have been completed to its satisfaction.
- 5.6 The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 5.7 Any advice, recommendation, information, assistance or service provided by the Supplier in relation to Materials or Works supplied is given in good faith, is based on the Supplier's own knowledge and experience and shall be accepted without liability on the part of the Supplier, and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Materials or Works.
- 5.8 The Client acknowledges that the Works are inherently dangerous and that it is the Client's responsibility to ensure the safety of its own personnel equipment and things at all time.
- 5.9 The Client must give the Supplier written notice of any alleged defects in the Works within two (2) days of the Completion of the Works in which event Clause 16 shall apply otherwise the Client shall be deemed to have accepted that the Works have been completed to its satisfaction.

## **6 Supplier's Personnel and Equipment**

- 6.1 The Client must consult with and fully brief the Supplier's personnel about the Works and the Worksite including the proposed tasks, the Worksite, Worksite conditions, matters affecting the health and safety of the Supplier's personnel and all reasonable information requested by the Supplier's personnel who may refuse to carry out any or all of the Works if they believe its use may affect the safety of people, property, or the Supplier's equipment or breach any law.
- 6.2 The Client must ensure the Supplier's equipment:
- (a) is not operated by anyone other than the Supplier's personnel unless the Supplier has first given written consent and then only by persons who are suitably trained, licensed experienced and if necessary certified in accordance with all laws and wearing suitable safety clothing and using protective equipment as recommended by the Supplier or the manufacturer;
  - (b) used only for its intended purpose, in suitable terrain and in a manner which has regard to the Equipment's capabilities and limitations;
  - (c) used in compliance with any instructions given to the Client by the Supplier or accompanying the Equipment and never excess of the manufacturer's rated load or carrying capacity or other stated limitations; and

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- (d) not contaminated or damaged or at risk of being contaminated or damaged by hazardous material or water.
- 6.3 The Client must not direct the Supplier's personnel to use the Equipment so that it comes in contact with materials that are noxious, flammable, hazardous, dangerous or explosive in nature.
- 6.4 The Supplier must ensure that the Supplier's personnel:
- (a) are suitably trained, licensed, experienced (and if necessary certified) and operate the equipment and carry out the Works in accordance with all laws;
  - (b) follow the reasonable directions of the Client, if appropriate;
  - (c) be fit to operate the equipment and carry out the Works and not be under the influence of drugs or alcohol;
  - (d) allow themselves to be appropriately briefed by the Client as to the proposed task, the Worksite condition and matters affecting the health and safety of people, property and equipment; and
  - (e) wear suitable safety clothing and protective equipment as recommended by the manufacturer; and
  - (f) carry out the Works to a proper standard of skill and competence.

**7 Exclusion of Implied Terms**

- 7.1 The Client may have the benefit of consumer guarantees under the ACL and otherwise. To the maximum extent permitted by law, all terms, conditions or warranties that would be implied into these Supply Terms or in connection with the supply of any Materials or Services by the Supplier to the Client under law, statute, custom or international convention are excluded.

**8 Limitation of Liability under ACL Guarantees**

- 8.1 To the extent that Materials supplied by the Supplier are not Materials of a kind ordinarily acquired for personal, domestic or household use and the Client is deemed to be a consumer for the purpose of Section 64A of the ACL, the Client agrees that the Supplier's liability for a failure to comply with a consumer guarantee that the Client may have a benefit of under the ACL (other than a guarantee under Sections 51 (Title), 52 (Undisturbed Possession) and 53 (Undisclosed Securities) is limited to at the option to the Supplier to one or more of these:
- (a) replacement of the Materials or the Supply of equivalent Materials;
  - (b) the repair of the Materials;
  - (c) the payment of the costs of replacing the Materials or of acquiring equivalent Materials; or
  - (d) equivalent Materials or payment of the costs of having the Materials repaired.
- 8.2 To the extent that the Services provided by the Supplier are Services other than Services of a kind ordinarily required for personal, domestic or household use or consumption, the Supplier's liability for failure to comply with the consumer guarantee that the Client may have the benefit of is limited to, at the option of the Supplier:
- (a) the supply of the Services again; or
  - (b) the payment of the fair cost of having the Services provided again.

**9 Limitation of Liability**

- 9.1 To the maximum extent permitted by law and subject to Clauses 7 and 8 the Supplier's total liability arising out of or in connection with its performance or its obligations pursuant to these Supply Terms or arising out of or in connection with the supply of specific Materials or Services (including pursuant to or for any breach of these Supply Terms or repudiation of those, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:

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- (a) the Supplier shall have no liability to the Client to any Consequential Loss; or
- (b) the Supplier's total aggregate liability for loss, however arising shall not exceed the GST exclusive aggregate price paid by the Client to the Supplier for the specific Materials or Services that gave rise to the loss in question. Limitation exclusions in this Clause do not apply to the extent that any loss is directly attributable to:
  - (i) the personal injury or death caused by the Supplier's default, breach of these Supply Terms or negligence; or
  - (ii) fraud by the Supplier.

9.2 Each party must take reasonable steps to mitigate any loss it suffers or incurs.

**10 Title**

- 10.1 The Supplier retains legal and equitable title in any Materials supplied to the Client until payment and until then the Client may sell the Materials or use the Materials in a manufacturing or construction process in the ordinary course of the Client's business for true market value but as between the Client and the Buyer of the Materials, the Client sells as principal and not as the agent of the Supplier. The proceeds of any such sale must be held by the Client in a separate fund on trust for the Supplier and the Client is under a duty to account to the Supplier for those proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Client to pay the Supplier for the Materials.
- 10.2 Until the Materials are sold or used in a manufacturing construction process, the Client must keep the Materials safe and free from deterioration, loss or harm and clearly designate the Materials as the property of the Supplier and keep full and complete records of the physical location of the Materials and the ownership of the Materials by the Supplier.
- 10.3 The Supplier is irrevocably entitled to, at any time, and from time to time before any sale of any of the Materials by the Client to enter any of the Client's premises, vehicles or vessels to inspect or to recover and retake possession of the Materials and otherwise in relation to the Materials exercise any of its rights whether those rights are as owner or unpaid seller or otherwise and whether those rights are conferred by common law, contract, statute or any way. If the Materials are held by a third party then the Client shall obtain the consent of that third party so that the Supplier may exercise its rights under this Clause and shall indemnify the Supplier and its agents from any liability arising from the exercise of those rights.
- 10.4 The reservation of title and ownership is effected whether or not the Materials have been altered from their supplied form or comingled with other Materials.

**11 Personal Property Securities Act 2009 ("PPSA")**

- 11.1 The Supplier's rights set out in these Supply Terms where applicable constitute the grant of a purchase money security interest (PMSI) by the Client in favour of the Supplier for the purposes of the PPSA.
- 11.2 The Client must immediately, if requested by the Supplier sign any documents, provide all necessary information and do anything else required by the Supplier to ensure that the Supplier's PMSI is a perfected security interest under the PPSA.
- 11.3 The Client will not enter into any security agreement that permits any other person to have or to register any security interests in respect of the Materials or any proceeds from the sale of the Materials until the Supplier has perfected its PMSI under the PPSA.
- 11.4 In this Clause collateral, financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.5 Upon assenting to these Supply Terms in writing the Client acknowledges and agrees that these Supply Terms constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials or collateral being a monetary obligation of the Client to the Supplier for Services that have previously been supplied and that will be supplied in the future by the Supplier to the Client.

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- 11.6 The Client undertakes to:
- (a) promptly sign any further documents or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to;
    - (i) register a financing statement or financing change statement in relation to a security interest on the PPSR;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in this sub- Clause;
  - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Materials so charged;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials or collateral in favour of a third party without the prior written consent of the Supplier; and
  - (e) immediately advise the Supplier 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.
- 11.7 The Supplier and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Supply Terms.
- 11.8 The Client waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.9 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.10 Unless otherwise agreed to in writing by the Supplier, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.11 The Client must unconditionally ratify any actions taken by the Supplier under Clauses 11.6 to 11.8.
- 11.12 Subject to any express provisions to the contrary nothing in these Supply Terms is intended to have the effect of contracting out of any of the provisions of the PPSA.

## **12 Security and Charge**

- 12.1 The Client charges all of the Client's right, title and interest in all present and after-acquired property and present and after-acquired land held by the Client, to secure the payment of all amounts due and payable under these Supply Terms (Secured Monies). The Client consents to the Supplier lodging a caveat or caveats or to registering the Supplier's security interest on the PPSR to note the Supplier's interest under this Clause.
- 12.2 On demand by the Supplier, the Client will immediately provide any information, or do any action required by the Supplier, including executing a mortgage or any other instrument of security, in terms satisfactory to the Supplier, to further secure payment of the Secured Monies.
- 12.3 The Client irrevocably appoints the Supplier and, any person nominated by the Supplier, severally the attorney of the Client with power to execute, sign, seal and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) such mortgage or other document to give effect to this security.
- 12.4 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on an indemnity basis incurred in exercising the Supplier's rights under this Clause.

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**13 Intellectual Property**

- 13.1 All intellectual property created by the Supplier relating to the Materials or Services is from the time of the creation owned by the Supplier.
- 13.2 The Supplier grants to the Client a non exclusive royalty free licence to use the Supplier's intellectual property to the extent that such Materials form part of or are integral to the Materials or Services and the Client must not remove any branding, patent, copyright or other proprietary notices of the Supplier on the Materials unless the Client first obtains the prior written consent of the Supplier.
- 13.3 If the Client provides the Supplier with any design, writing, drawing or specifications that are used in regards to the Materials or Services the Client warrants that the use of them will not cause the Supplier to infringe any third party's rights and agree to indemnify the Supplier against any action taken by a third party in respect of any alleged rights.
- 13.4 If anything referred to in Clause 13.3 is given by the Client to the Supplier the Client gives the Supplier ownership to those things and if that cannot be given both the moral rights in those things and the exclusive right to make a commercial use of them.

**14 GST**

- 14.1 If the Supplier has any liability to pay Materials and Services Tax (GST) on the supply of any Materials or Services to the Client, the Client must pay the Supplier an amount equivalent to the GST liability of the Supplier at the same time as the consideration is paid for the Materials or Services (unless the consideration for that Supply is expressed specifically to be GST inclusive).

**15 Privacy**

- 15.1 The Supplier will comply with the Australian Privacy Principles in all dealings with the Client.
- 15.2 The Supplier may need to collect personal information about the Client and, if applicable its Directors, including but not limited to full names and addresses, drivers licence details, credit card details, dates of birth and credit or business history (the Personal Information).
- 15.3 The Client consents to the Supplier using the Personal Information in order to:
- (a) satisfy itself as to the Client's creditworthiness or exercising the Supplier's rights under Clauses 11 and 12;
  - (b) provide Materials and Services to the Client;
  - (c) prevent the theft of the Materials;
  - (d) enter into contracts with the Client or third parties; and
  - (e) market to the Client and maintain a business relationship with the Client.
- 15.4 The Client consents to the Supplier disclosing the Personal Information to:
- (a) any credit provider or credit reporting agency for the purpose of obtaining or giving information about the Client including its credit or business history or the Client's commercial activities or creditworthiness generally;
  - (b) the Supplier's service providers, contractors and affiliated companies from time to time to help improve and market the Supplier's services to the Client; and
  - (c) any lawyers or mercantile agents to enforce any of the Supplier's rights against the Client or to any prospective guarantor if the Client proposes a replacement or additional guarantor.
- 15.5 The Client has a right to access the Personal Information the Supplier holds about the Client and copies of the Supplier's Credit Product Privacy Policy and Credit Reporting Policy are available upon written request made to the Supplier.

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**16 Dispute Resolution**

- 16.1 If there is a dispute between the Parties that is in any way connected with these Supply Terms or the Works then the Party alleging the dispute (the Disputing Party) must notify the other Party in writing giving full particulars of the dispute and their proposal to remedy the dispute.
- 16.2 The other Party must within fourteen (14) days provide a written response to the Disputing Party including their proposal to remedy dispute.
- 16.3 The Parties must then within seven (7) days use their best endeavours to resolve the dispute including any necessary meetings and if the dispute is not resolved then either Party may refer the dispute to arbitration to be conducted by the Institute of Arbitrators Australia pursuant to their Rules for conduct of commercial arbitrations.

**17 Acknowledgements**

- 17.1 The Client acknowledges and agrees that:
- (a) the failure by the Supplier to enforce any provision of these Supply Terms shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision;
  - (b) if any part of these Supply Terms is void or unenforceable, it may be severed without affecting the enforceability of any other part;
  - (c) a breach of these Supply Terms is a breach of the Credit Terms (if applicable);
  - (d) where the law permits the Supplier shall be under no liability whatsoever to the Client for any Consequential Loss suffered by the Client from a breach by the Supplier of these Supply Terms;
  - (e) the Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute;
  - (f) the Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent; and
  - (g) it must pay any stamp duty assessed on this document or the transactions contemplated by it or fee to any Register or maintain any security interest held or to be held by the Supplier under these Supply Terms;

**18 Claim for Payment**

- 18.1 If applicable a claim for monies owed under these Supply Terms are a claim for payment under the Building Constructions and Payments Act 2004 (QLD) or the Building and Construction Industry Security of Payment Act 1999 (NSW).

**19 General**

- 19.1 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 19.2 The Client shall, until title in the Materials has passed, give the Supplier not less than fourteen (14) days prior written notice of any proposed change affecting the structure, management, ownership or control of the Client including its ACN, ABN or any details required on the PPSR or any other change in the Client's Contact Details.
- 19.3 Electronic signatures shall be accepted providing that the persons signing have complied with the Electronic Transactions Act 2000 (NSW).
- 19.4 These Supply Terms and any contract, agreement or transaction to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of Tweed Heads, New South Wales.