

1. DEFINITIONS

- 1.1. **“Agreement”** means this document, quotation and includes all schedules.
- 1.2. **“Goods”** means goods or materials supplied by Contractor to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Contractor to the Client.
- 1.3. **“Loss”** means any loss, cost, expense, damage, injury to person, death or liability (including any fine or penalty) whether direct or indirect or consequential (including but not limited to loss of profit, loss of opportunity, expenses incurred), present or future, fixed or unascertained, actual or contingent and whether arising under the Agreement (including any breach of the Agreement), in equity, under statute (including breach of statutory duty to the maximum extent possible), in tort or otherwise (including in restitution).
- 1.4. **“Price”** means the total price payable for the Goods and/or Services as agreed between the Client and the Contractor in accordance of the Agreement or a written agreement between the parties.
- 1.5. **“Services”** means all Services supplied by Contractor to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).

2. DELIVERY OF GOODS AND SERVICES

- 2.1. The Contractor shall provide Goods or Services in a proper and workmanlike manner and ensure that any Goods or Services provided under this Agreement be fit for the purpose as set out in this Agreement.
- 2.2. If the Services provided under this Agreement include residential building works as defined by the *Home Building Act 1989 (NSW)* (the ‘HB Act’), then the Contractor warrants that the works will be performed in accordance with the requirements and statutory warranties contained in the HB Act.
- 2.3. The Client will pay the Contractor the Price pursuant to the terms set out in this Agreement.

3. RETENTION OF TITLE AND RISK

- 3.1. Ownership of the Goods and Services shall remain vested in Contractor until full payment has been received and the Client has met all other obligations due by the Client to the Contractor.

- 3.2. All risk in the Goods passes to the Client on delivery and Contractor shall not be liable for any damage or loss to the Goods from such time.

4. PAYMENT

- 4.1. It is a condition precedent to the commencement of this Agreement that the Deposit is paid to the Contractor on the day of signing of this Agreement.
- 4.2. The Contractor may, from time to time, submit a tax invoice for payment to the Client for the value of the Goods or Services completed and supplied (“Payment Claim”).
- 4.3. The Client agrees that all payments will be made to the Contractor within the time stated on the Payment Claim.
- 4.4. In the event of any variations to the Goods and/or Services under clause 5, the Contractor is entitled to be paid and the Client is required to pay for any such variation upon completion of the variation works.
- 4.5. If provision of the Services is delayed by the Client or by any means outside reasonable control of the Contractor, the Contractor is entitled to claim delay costs incurred by reason of such delays.
- 4.6. The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Contractor.
- 4.7. GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. **VARIATIONS**

5.1. To the extent practicable, prior to any variation works being provided to the Client:

5.1.1. the Contractor must notify the Client in writing within five (5) business days of becoming aware of any variation required to complete the Services or to make the Services compliant with any applicable law; and

5.1.2. the Client must confirm their acceptance of the said variation(s) to the Contractor within five (5) business days of receiving written notice of the variation(s).

5.2. The Contractor under subclause 5.1.1 shall provide the following information:

5.2.1. detailing the work required to carry out the variation;

5.2.2. the estimated reasonable costs of the variation; and

5.2.3. any extension of time required as a result of carrying out the variation.

5.3. The Client must reasonably grant such extension of time and costs of the variation (if any) under this clause.

6. **INDEMNITY AND LIMITATION OF LIABILITY**

6.1. The Contractor will be liable for and will indemnify the Client and keep the Contractor indemnified from and against any liability and/or Loss or damage of any kind whatsoever, arising from:

6.1.1. any breach of any warranty or any of the terms and conditions of this Agreement by the Contractor;

6.1.2. any Loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property or any other Loss or damage of any kind whatsoever caused or contributed to by the Contractor in providing the Goods and/or Services;

6.1.3. any claim made against the Client by any of the Contractor's employees, agents, contractors and/or sub-contractors in respect of any relevant legislation concerning income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal;

6.2. The Client shall indemnify and keep indemnified the Contractor at all times against all actions, proceedings, claims, demands, liabilities, either express or implied, and all costs, Loss, damages and expenses whatsoever resulting or arising from:

6.2.1. any breach by the Client of this Agreement;

6.2.2. any documents or records provided by the Client in respect of the Services; and

6.2.3. the negligent act or omission of the Client or its agents or other contractors and consultants (not including the Contractor).

6.3. Any warranty for the Goods is limited to the extent of the warranty that is provided by the manufacturer of the Goods.

6.4. Any warranty that is provided is deemed to be void if the Services and/or Goods provided have been tampered with or altered by any other party or person or entity other than the Contractor and in the event of those circumstances, the Contractor shall not be responsible for any Loss or damages whatsoever.

6.5. The Contractor shall not be liable for any loss or damage caused in accessing the Client's premises beyond the reasonable control of Contractor (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas).

6.6. The Contractor shall have no liability to the Client for or in respect of any indirect or direct consequential losses (including without limitation loss of actual or anticipated profit or revenue, business interruption, delay costs, financing costs, holding costs and loss of opportunity).

6.7. To the extent permitted by law and notwithstanding any other provisions of this Agreement, the Contractor's total aggregate

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liability to the Client arising out of or in connection with the Services where under the law of contract, in tort, (including negligence), in equity, under statute or otherwise, is limited to a maximum amount equal to the Price.

- 6.8. No liability whatsoever shall attach to the Agreement unless all variations and payments have been paid in full by the Client.

7. **DEFAULT**

- 7.1. If the Client defaults in payment of any Payment Claim when due, the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in pursuing the debt including legal costs on a solicitor and own client basis and the Contractor's collection agency costs.

- 7.2. Without prejudice to any other remedies the Contractor may at any time the Client is in breach of any obligation (including those relating to payment), the Contractor may suspend or terminate the supply of Goods and/or Services and any of its other obligations under this Contract. The Contractor will not be liable to the Client for any Loss or damage the Client suffers because the Contractor has exercised its rights under this clause 7.

- 7.3. Without prejudice to the Contractor's other remedies at law, the Contractor shall be entitled to immediately terminate this Agreement and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable in the event that:

- 7.3.1. any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to meet its payments as they fall due; or

- 7.3.2. the Client becomes bankrupt or insolvent, 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

- 7.3.3. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

8. **INSURANCE**

- 8.1. The Contractor will maintain the following insurances:

- 8.1.1. Public liability insurance;

- 8.1.2. if the Services performed under this Agreement include residential building works as defined by HB Act and the Price

exceeds \$20,000.00, Home Owner Warranty Insurance.

9. **TERMINATION**

- 9.1. The Contractor may in its absolute discretion terminate this contract without being obliged to give any reason, end this contract with ten (10) business days' notice. The Contractor is entitled to be paid for all Goods and/or Services supplied up until the termination date.

- 9.2. In the event the Client defaults in payment of any Payment Claim when due, the Contractor may terminate this Contract by providing 5 business days' notice.

- 9.3. In the event the Contractor commits a breach of this Agreement, the Client shall give ten (10) business days written notice to the Contractor to rectify such breach. If the Contractor fails to rectify such breach within the time then the Client is entitled to terminate the Agreement by written notice.

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- 9.4. In the event that this Agreement is terminated, the Contractor is entitled to claim for any loss of profit, the Services completed up to the date of termination and any other reasonable costs the Contractor may incur in removing its plant and equipment from the site. This clause 9 shall survive upon termination of this Contract.
- 9.5. If the Services provided under this Agreement include residential building works as defined by HB Act, the Client may terminate this Agreement within five (5) business days of acceptance without penalty.
- 10. COMPLIANCE WITH LAWS**
- 10.1. The Client and Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods and/or Services.
- 10.2. The Client agrees that the site for Services will comply with any workplace health and safety laws relating to building/construction sites and any other relevant safety standards or legislation that apply in the state of New South Wales.
- 11. DISPUTE RESOLUTION**
- 11.1. In the event that any dispute arises between the Client and the Contractor from the performance or as to the meaning of this Agreement, both parties shall attempt to resolve the dispute within 14 days of the manifestation of the dispute.
- 11.2. Should the parties not resolve the dispute within the 14 day period specified in clause 11.1, the parties can choose to seek redress in any court of law or court of competent jurisdiction in New South Wales, or by agreement through arbitration.
- 11.3. Notwithstanding the referral of any dispute to arbitration or litigation, the Client shall, if the Services have been completed by the Contractor, make the payment to Contractor in accordance with this Agreement. The Client shall also continue to pay to the Contractor any fees for the work which are not subject of a dispute.
- 12. GENERAL**
- 12.1. If any provision of this Agreement is found to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 12.2. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- 12.3. The Contractor may assign, license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 12.4. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 12.5. Any failure by the Contractor to enforce any provision of this Agreement shall not be treated as a waiver of that provision, nor shall it affect the Contractor right to subsequently enforce that provision.
- 12.6. If the Services provided under this Agreement include residential building works as defined by HB Act and the Price exceeds \$5,000.00, the Client acknowledges that have been provided with a copy of NSW Fair Trading's Consumer Building Guide or a copy can be found on https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0010/875170/Consumer_Building_Guide-July-2020.pdf.