

Alclad Architectural Pty Ltd – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "Supplier" means Alclad Architectural Pty Ltd ATF Williams Family Trust T/A Alclad Architectural Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Alclad Architectural Pty Ltd ATF Williams Family Trust T/A Alclad Architectural Pty Ltd.</p> <p>1.2 "Customer" means the person's buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.</p> <p>1.3 "Goods" means all Goods/Services supplied by the Supplier to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).</p> <p>1.4 "Equipment" means all Equipment including any accessories supplied on hire by the Supplier to the Customer and includes any Goods/Services included in any supply of Services. The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Supplier to the Customer.</p> <p>1.5 "Price" means the Price payable (plus any GST where applicable) for the Goods/Equipment hire as agreed between the Supplier and the Customer in accordance with clause 5 below.</p> <p>2. Acceptance</p> <p>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 the Goods/Equipment.</p> <p>2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Supplier.</p> <p>2.3 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on the Supplier's website. If there are any inconsistencies between the 2.1, 2.2 documents, then the terms and conditions contained in this document shall prevail.</p> <p>3. Electronic Transactions (Victoria) Act 2000</p> <p>3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p>4. Change in Control</p> <p>4.1 The Customer shall give the Supplier 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), or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.</p> <p>5. Price and Payment</p> <p>5.1 At the Supplier's sole discretion, the Price shall be either:</p> <p>(a) as indicated on any invoice provided by the Supplier to the Customer; or</p> <p>(b) the Price as at the date of delivery of the Goods/Equipment according to the Supplier's current price list; or</p> <p>(c) the Supplier's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.</p> <p>5.2 The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to unforeseen circumstances such as weather, weather conditions, access to the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, inaccurate measurements provided by the Customer or as a result of any increase to the Supplier's in the cost of materials and labour) will be charged for on the basis of the Supplier's 12.4 quotation and will be shown as variations on the invoice. The Customer shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.</p> <p>5.3 At the Supplier's sole discretion, a non-refundable deposit may be required.</p> <p>5.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by 12.2 the Customer on the date/s determined by the Supplier, which may be:</p> <p>(a) on delivery of the Goods/Equipment;</p> <p>(b) before delivery of the Goods/Equipment;</p> <p>(c) by way of instalments/progress payments in accordance with the Supplier's payment 12.9 schedule;</p> <p>(d) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices.</p> <p>5.5 The date specified on any invoice or other form as being the date for payment or:</p> <p>(a) 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 Supplier.</p> <p>5.6 Payment may be made by cash, cheque, bank cheque, electronic/bank banking, credit card (a surcharge may apply per transaction), or by any other method as agreed between the Customer and the Supplier.</p> <p>5.7 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 Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>5.8 Unless otherwise stated, the Price does not include GST. In addition to the Price the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods/hire of the Equipment. The Customer must pay GST, without deduction or set off of any other amounts, 14.1 at the same time as the Price. The Customer must pay GST on the Supplier's invoice. 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.</p> <p>6. Delivery of Goods/Equipment</p> <p>6.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:</p> <p>(a) the Customer or the Customer's nominated carrier takes possession of the Goods/Equipment at the Supplier's address; or</p> <p>(b) the Supplier (or the Supplier's nominated carrier) delivers the Goods/Equipment to the Customer's nominated address even if the Customer is not present at the address.</p> <p>6.2 At the Supplier's discretion, the Supplier may deliver the Goods/Equipment to the Customer's address.</p> <p>6.3 The Customer must take delivery by receipt or collection of the Goods whenever they are 14.1 tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery 14.4 and/or storage.</p> <p>6.4 The Supplier may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>6.5 Any time or date given by the Supplier to the Customer is an estimate only. The Customer 14.5 must accept delivery of the Goods/Equipment even if late and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.</p> <p>7. Online Ordering</p> <p>7.1 The Customer acknowledges and agrees that:</p> <p>(a) The Customer does not guarantee the websites performance or availability of any of its Goods; and</p> <p>(b) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades; and</p> <p>(c) there are inherent risks in electronic distribution and as such the Supplier cannot warrant against delays in transmitting data between the customer and the Supplier including orders, and you agree that to the maximum extent permitted by law, 14.8 the Supplier will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders.</p> <p>7.2 The Supplier reserves the right to refuse orders if the Supplier is satisfied evidence of misleading information, interfered with other users or the administration of the Supplier services, or violated these terms and conditions.</p> <p>7.3 Any sample Goods produced at the request of the Customer shall be at the Customer's expense. The Supplier makes no warranty or guarantee that the sample Goods produced by the Supplier will correspond with any colour, texture or blend with the sample provided by the Customer or with any previous sample provided.</p> <p>8. Risk</p> <p>8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.</p> <p>8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The Supplier's liability for the Goods is limited to the replacement value of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.</p> <p>8.3 If the Customer requires the Supplier to leave Goods outside the Supplier's premises for 14.11 collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.</p> <p>8.4 Where the Supplier is required to install the Goods the Customer warrants that the structure of 15.1 the premises or equipment in or upon which these goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and the Supplier shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or 15.2 arising in connection with the installation and work incidental thereto.</p> <p>8.5 Whilst every care shall be taken by the Supplier, any damage or breakage to the Customer's existing glass during works by the Supplier shall be at the Customer's own risk.</p> <p>8.6 Where the Customer has supplied measurements or templates for the Supplier to complete 15.3 the Goods, the Customer acknowledges that the Supplier shall not be liable for any errors or damage resulting from the Customer's incorrect measurements or templates, unless the error is a mistake by the Supplier by virtue of misinterpreting the measurements provided.</p> <p>8.7 Holes, cut outs and cutting of the Goods may weaken the strength of the Goods and although 16.1 it's unlikely to crack, the Supplier accepts no responsibility against cracks occurring after such Goods (that are subject to holes and cut outs) are installed unless a toughened glass is used.</p> <p>9. Underground Locations</p> <p>9.1 Prior to the Supplier commencing any work the Customer must advise the Supplier of the 16.2 precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer 16.3 shafts, water, stormwater, fibre optic cables, fibre optic cables, oil pumping mains, and any other services that may be on site.</p> <p>9.2 Whilst the Supplier will take all care to avoid damage to any underground services the Customer agrees to indemnify the Supplier 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 9.1.</p> <p>10. Access</p> <p>10.1 The Customer shall ensure that the Supplier has clear and free access to the work site at all times to enable them to undertake the Services. The Supplier shall not be liable for any loss or damage to the site including, but not limited to, damage to driveways, footpaths, concrete and 16.4 (or paved or grassed areas) unless due to the negligence of the Supplier.</p> <p>11. Title to Goods</p> <p>11.1 The Supplier and the Customer agree that ownership of the Goods shall not pass until:</p> <p>(a) the Customer has paid the Supplier all amounts owing to the Supplier; and</p> <p>(b) the Customer has met all of its other obligations to the Supplier; and</p> <p>11.2 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.</p> <p>11.3 If it further agreed that:</p>	<p>(a) until ownership of the Goods passes to the Customer in accordance with clause 11.1 that 17.1 the Customer is only a bailee of the Goods and must return the Goods to the Supplier on 17.1 the Supplier's demand.</p> <p>(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the 17.2 Goods being lost, damaged or destroyed.</p> <p>(c) the Customer must not sell, dispose, or otherwise part with possession of the Goods 17.3 or otherwise in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the 18.1 proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds 18.1 to the Supplier on demand.</p> <p>(d) the Customer should not convert or process the Goods or intermix them with other goods 18.2 but the Customer may use the Goods for the purposes of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.</p> <p>(e) the Customer irrevocably authorises the Supplier to enter any premises where the 18.2 Supplier believes the Goods are kept and/or possession of the Goods.</p> <p>(f) the Supplier may recover possession of any Goods in transit whether or not delivery has 18.3 occurred.</p> <p>(g) the Customer shall not charge or grant an encumbrance over the Goods nor grant 18.3 otherwise give away any interest in the Goods while they remain the property of the Supplier.</p> <p>(h) the Supplier may commence proceedings to recover the Price of the Goods sold 18.4 notwithstanding that ownership of the Goods has not passed to the Customer.</p> <p>Personal Property Securities Act 2009 ("PPSA")</p> <p>19.1 In this clause, a financing statement, financing change statement, security agreement, and 19.1 security interest has the meaning given to it by the PPSA.</p> <p>19.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and 19.1 agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and that the Customer's Goods/Equipment that has previously been supplied and that will be supplied in the future by the Supplier to the Customer.</p> <p>19.3 The Customer undertakes to:</p> <p>(a) promptly sign any further documents and/or provide any further information (such 19.1 information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to:</p> <p>(i) register a financing statement or financing change statement in relation to a security 19.2 interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defective financing statement referred to in clause 12.4(a)(i) or 12.3(a)(ii);</p> <p>(b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in 19.3 registering a financing statement or financing change statement on the Personal Property 19.4 Securities Register established by the PPSA or releasing any Goods/Equipment charged 19.2 to the Supplier;</p> <p>(c) not register a financing change statement in respect of a security interest without the 19.1 prior written consent of the Supplier;</p> <p>(d) not register, or permit to be registered, a financing statement or a financing change 19.2 statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of the Supplier;</p> <p>(e) immediately advise the Supplier of any material change in its business practices of 19.5 Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>19.6 The Supplier and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to this security agreement created by these terms and conditions.</p> <p>19.7 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 19.6 132(3)(d) and 132(4) of the PPSA.</p> <p>19.8 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>19.9 Unless otherwise agreed to in writing by the Supplier, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>19.10 The Customer must unconditionally ratify any actions taken by the Supplier under clauses 12.3 to 12.5.</p> <p>19.11 Subject to any express provisions to the contrary (including those contained in this clause 12) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>Security and Charge</p> <p>20.1 The Customer agrees to the Supplier agreeing to supply the Goods/Equipment, the Customer 20.1 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, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any invoices).</p> <p>20.2 The Customer agrees to indemnify the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising 19.7 the Supplier's rights under this clause.</p> <p>20.3 The Customer irrevocably appoints the Supplier and each director of the Supplier as the 20.1 Supplier's authorised agent to do all such things as may be necessary to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.</p> <p>20.4 Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</p> <p>20.5 The Supplier warrants that the Goods/Equipment on delivery and not within seven (7) days 20.1 of delivery notify the Supplier in writing of any evident defect/damage, shortage in quantity, or 19.9 failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Customer must allow the Supplier to inspect the 20.1 Goods/Equipment.</p> <p>20.6 Under applicable State, Territory and Commonwealth Law (including, without limitation the 20.1 CCA), certain statutory implied guarantees and warranties (including, without limitation the 20.1 statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).</p> <p>20.7 The Supplier acknowledges that nothing in these terms and conditions purports to modify or 20.1 exclude the Non-Excluded Guarantees.</p> <p>20.8 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded 20.2 Guarantees, the Supplier makes no warranties or other representations under these terms and conditions in relation to the quality or suitability of the Goods/Equipment.</p> <p>20.9 The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.</p> <p>20.10 If the Customer is a consumer within the meaning of the CCA, the Supplier's liability is limited 20.1 to the extent permitted by section 64A of Schedule 2.</p> <p>20.11 If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Customer has paid for the Goods.</p> <p>20.12 If the Customer is not a consumer within the meaning of the CCA, the Supplier's liability for 20.3 a return then the Supplier will not be liable for the cost of the replacement.</p> <p>20.13 (a) limited to the value of any express warranty or warranty card provided to the Customer by the Supplier at the Supplier's sole discretion;</p> <p>(b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods;</p> <p>(c) the Supplier is not liable for any consequential loss or damage.</p> <p>20.14 Subject to this clause 14, returns will only be accepted provided that:</p> <p>(a) the Customer has complied with the provisions of clause 14.1; and</p> <p>(b) the Supplier has agreed that the Goods are defective; and</p> <p>(c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and</p> <p>(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.</p> <p>20.15 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:</p> <p>(a) the Customer failing to properly maintain or store any Goods/Equipment;</p> <p>(b) the Customer using the Goods/Equipment for any purpose other than that for which they 21.2 were designed;</p> <p>(c) the Customer continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;</p> <p>(d) the Customer failing to follow any instructions or guidelines provided by the Supplier;</p> <p>(e) fair wear and tear, any accident, or act of God.</p> <p>20.16 The Customer agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Supplier 23.2 has created for the Customer.</p> <p>Default and Consequences of Default</p> <p>23.1 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept 23.1 payment on overdue invoices shall be due daily from the date when payment becomes due 23.3 until the date of payment in full and a half percent (0.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>23.4 If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from 23.4 the Supplier's costs and disbursements incurred by the Supplier in recovering the debt 23.4 (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's contract default fee, and bank disbursement fees).</p> <p>23.5 Further to any other rights or remedies the Supplier may have under this contract, if a 23.6 Customer fails to pay any amount due to the Supplier, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations 23.7 under this agreement.</p> <p>23.8 Subject to any express provisions to the contrary the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to the Supplier becomes overdue; or in the Supplier's opinion the 23.8 Customer is unable to make a payment when it falls due;</p> <p>(b) the Customer has exceeded any applicable credit limit provided by the Supplier;</p> <p>(c) the Customer becomes 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</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p>	<p>Compliance with Laws</p> <p>The Customer and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.</p> <p>The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.</p> <p>The Customer agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.</p> <p>Cancellation</p> <p>The Customer may at any other remedies the Supplier 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 Supplier may suspend or terminate the supply of Goods/Equipment to the Customer and the Customer shall be liable to the Supplier for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.</p> <p>The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are delivered by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any money paid by the Customer for the Goods/Equipment. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>In the event that the Customer cancels delivery of Goods/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation including, but not limited to, the loss of profit.</p> <p>Cancellation of orders for Goods/Equipment made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>Privacy Act 1988</p> <p>The Customer agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by the Supplier.</p> <p>The Customer agrees that the Supplier may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:</p> <p>(a) to assess an application by the Customer; and/or</p> <p>(b) to notify other credit providers of a default by the Customer; and/or</p> <p>(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</p> <p>(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.</p> <p>The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.</p> <p>The Customer agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):</p> <p>(a) to assess the creditworthiness of the Customer; and/or</p> <p>(b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or</p> <p>(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or</p> <p>(d) to assess the contents of any outstanding in relation to the Goods.</p> <p>The Supplier may give information about the Customer to a CRB for the following purposes:</p> <p>(a) to obtain a consumer credit report;</p> <p>(b) allow the CRB to create or maintain a credit information file about the Customer including the Customer's credit history; and</p> <p>(c) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.</p> <p>The information given to the CRB may include:</p> <p>(a) personal information as outlined in 19.1 above;</p> <p>(b) name of the credit provider and that the Supplier is a current credit provider to the Customer;</p> <p>(c) whether the credit provider is a licensee;</p> <p>(d) type of consumer credit;</p> <p>(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);</p> <p>(f) details of consumer credit defaults, 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 Supplier has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);</p> <p>(g) information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement;</p> <p>(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred (100) times the amount of the Customer's overdue payment (e.g. \$150).</p> <p>The Customer shall have the right to request (by e-mail) from the Supplier:</p> <p>(a) a copy of the information about the Customer retained by the Supplier and the right to request that the Supplier correct any incorrect information; and</p> <p>(b) to request the Supplier to disclose any personal information about the Customer for the purpose of direct marketing.</p> <p>The Supplier 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 agreement or to comply with a law. The Customer may make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer may make a complaint to the Information Commissioner at www.oaic.gov.au.</p> <p>Equipment Hire</p> <p>Equipment shall at all times remain the property of the Supplier and is returnable on demand by the Supplier. In the event that Equipment is not returned to the Supplier in the condition in which it was delivered, the Supplier reserves the right to charge the Customer the full cost of repairing the Equipment. In the event that Equipment is not returned at all the Supplier shall have right to charge the Customer the full cost of replacing the Equipment.</p> <p>The Customer shall:</p> <p>(a) use the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment;</p> <p>(b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;</p> <p>(c) by leaving it at the address of the other party as stated in this contract and in good order as delivered, and shall comply with any maintenance schedule as advised by the Supplier to the Customer.</p> <p>The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or sell insure, the Supplier's interest in the Equipment and agrees to indemnify the Supplier against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will affect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.</p> <p>Other Applicable Legislation</p> <p>At the Supplier's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Construction Contracts Act 2004 (Western Australia), Building and Construction Industry Payments Act 2004 (Queensland), Construction Contracts (Security of Payments) Act (Northern Territory of Australia), Building and Construction Industry Security of Payments Act 2009 (Australian Capital Territory), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) may apply.</p> <p>Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Act or the Acts listed in clause 5.1 (each as applicable), except to the extent permitted by the Act where applicable.</p> <p>Service of Notices</p> <p>Any written notice given under this contract shall be deemed to have been given and received:</p> <p>(a) by handing the notice to the other party in person;</p> <p>(b) by leaving it at the address of the other party as stated in this contract;</p> <p>(c) by sending it by registered post to the address of the other party as stated in this contract;</p> <p>(d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any); or</p> <p>(e) if sent by email to the other party's last known email address.</p> <p>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.</p> <p>General</p> <p>The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected.</p> <p>These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria the state in which the Supplier has its principal place of business, and are subject to the jurisdiction of the Melbourne Courts in that state.</p> <p>Subject to clause 14 the Supplier shall be under no liability whatsoever to the Customer for any consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment here).</p> <p>The Customer shall not be liable for any loss or any part of its rights and/or obligations under this contract without the Customer's consent.</p> <p>The Customer cannot licence or assign without the written approval of the Supplier.</p> <p>The Supplier may elect to subcontract out any part of the Services but shall not be relieved from its liability or obligation under this contract by doing so. Furthermore, the Customer agrees and understands that they have no authority to give any instructions to any of the Supplier's sub-contractors without the authority of the Supplier.</p> <p>The Customer agrees that the Supplier may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Supplier to provide Goods/Equipment to the Customer.</p> <p>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.</p> <p>Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.</p>
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