

**SOUTH GIPPSLAND CONCRETE PTY LTD**  
**TERMS AND CONDITIONS**

**1. Definitions**

- 1.1. “Contractor” means South Gippsland Concrete Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of South Gippsland Concrete Pty Ltd.
- 1.2. “Client” means the person/s or any person acting on behalf of and with the authority of the Client requesting the Contractor to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
  - a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - b) includes the Client’s executors, administrators, successors and permitted assigns;
- 1.3. “Works” means all Works or Materials provided by the Contractor to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.4. “Price” means the Price payable (plus any GST where applicable) for the Works as agreed between the Contractor and the Client in accordance with clause 5 below.
- 1.5. “GST” means Goods and Services Tax (GST) as defined within the “A New Tax System (Goods and Services Tax) Act 1999” Cth.

**2. Acceptance**

- 2.1. The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts, provision of any Works.
- 2.2. These terms and conditions may be amended at any time by the Contractor giving written notice to the Client, either prior to such change, or as soon as practicable after such change, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and the Contractor.
- 2.3. Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.4. These terms and conditions may be meant to be read in conjunction with the Contractor’s written quote to the Client (“Quote”), and:

(a) where the context so permits, the terms 'Works' or 'Materials' shall include any supply of Equipment, as defined therein; and (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

### **3. Errors and Omissions**

- 3.1. The Client acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- a) resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this contract; and/or
  - b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Works.
- 3.2. In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Contractor; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

### **4. Change in Control**

- 4.1. The Client shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.

### **5. Price, Deposit, Payment and Cancellation**

- 5.1. Subject to clause 5.3, at the Contractor's sole discretion, the Price shall be either:
- a) as indicated on invoices provided by the Contractor to the Client in respect of Works provided; or
  - b) the Price as at the date of provision of the Works according to the Contractor's current price list; or
  - c) the price stated in the Quote, regardless of whether signed or not, (subject to clause 5.3) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days (after which time the price is no longer valid unless otherwise stated by the Contractor).
- 5.2. Notwithstanding anything else in these terms and conditions, where the Price on the Quote or any other written document provided by the Contractor is stated to be an

estimate, it shall be a guide only and the actual price charged for the Works, including any variations, may be higher or lower than that stated.

- 5.3. The Contractor reserves the right to change the Price:
- a) if a variation to the Materials which are to be provided is requested; or
  - b) if a variation to the Works originally scheduled (including any applicable designs, plans or specifications) is requested; or
  - c) where additional Works are required (including without limitation, additional machine time associated with excavation) due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, hard rock barriers below the surface, iron reinforcing rods in concrete, obscured defects, latent conditions and/or foreign material, filling required, prerequisite work by any third party not being completed, change of design, poor weather conditions or limitations to accessing the site, etc.) which are only discovered on commencement of the Works; or
  - d) in the event of increases to the Contractor in the cost of labour or Materials, which are beyond the Contractor's control.
- 5.4. Contractor's day rate assumes a maximum of eight (8) hours labour per person, per day supplied by Contractor. Any extra hours worked are calculated and charged to Client at the then current day labour rate divided by 8, times the number of hours in excess of 8 worked.
- 5.5. Variations will be detailed in writing, and shown as variations on the Contractor's invoice. The Contractor will add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.6. For any Quote, a 30% deposit of the total Price will be required immediately.
- 5.7. Where the Client cancels the Works more than 14 days before the proposed commencement of the Works, Client shall be refunded the deposit less a \$400 administration fee and less any costs reasonably incurred by the Contractor (whether in the nature of materials ordered, sub-contractor fees paid or payable, or any other reasonable cost incurred) in connection with the proposed Works.
- 5.8. Where the Client cancels the Works 14 days or less before the proposed commencement of the Works, the Client forfeits the deposit in its entirety and must, in addition, pay to the Contractor (i) the cost of any Materials already delivered to the Client's site; or (ii) for the cost of pick-up and removal by the Contractor of such Materials.

- 5.9. Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor and notified to the Client, which may be:
- a) on completion of the Works; or
  - b) by way of instalments/progress payments in accordance with the Contractor's payment schedule;
  - c) the date specified on any invoice or other form as being the date for payment; or
  - d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Contractor.
- 5.10. Payment may be made by cash, cheque, bank cheque, electronic/on-line banking to the bank account specified on the invoice or by any other method as agreed to between the Client and the Contractor.
- 5.11. 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 nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.12. Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any provision of Works by the Contractor under this contract, or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. The Client 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.

## **6. Provision of the Works**

- 6.1. Subject to clause 6.2 and 6.3, it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 6.2. Unless specified in the Quote, it is Client's responsibility to ensure that prior to commencement of Works by Contractor, the ground is prepared at the correct height and depth +/-10mm of subgrade height. Client is liable to pay Contractor for any excessive digging or other work required to be performed by the Contractor due to incorrect ground preparation, with such work to be charged at Contractor's then standard rates.
- 6.3. The Works commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by

an event beyond the Contractor's control, including but not limited to, any event under clause 19.8, or any failure by the Client to:

- a) make a selection; or
- b) have the site ready for the Works; or
- c) notify the Contractor that the site is ready.

6.4. Unless specified otherwise in the Quote, when moving dirt, debris, sand or any other materials required to be moved to carry out the Works, the Contractor will dig and stockpile only once. Client will be liable to pay Contractor for any additional work of this nature which is required to be performed by Contractor with such work to be charged at Contractor's then standard rates.

6.5. Unless specified in the Quote, the Contractor accepts no responsibility for the checking of formwork, drains, or steel that has not been sub-contracted to the Contractor. Such checking is the direct responsibility of the Client (or any person it contracts to perform such work).

6.6. The Contractor may provide the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

6.7. Any time specified by the Contractor for delivery of the Works is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that the Contractor is unable to supply the Works as agreed solely due to any action or inaction of the Client, then the Contractor shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

## **7. Risk**

7.1. The Contractor shall maintain a contract works insurance policy, and public liability insurance of at least \$5m, until the Works are completed; and:

- a) it is the Clients responsibility to ensure that they have in place appropriate insurance in relation to the provision of the Works; and
- b) upon completion of the Works all risk for the Works shall immediately pass to the Client.

7.2. The Client acknowledges and agrees that, where the Contractor gives any advice, recommendation, information, assistance or service in relation to Works:

- a) it is given in good faith, based on the Contractor's own knowledge and experience and shall be accepted without liability on the part of the Contractor. 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 Works; and
  - b) such advice or recommendations are not acted upon (including regarding the suitability of the site for the laying of concrete slabs, foundations or similar work), then the Contractor shall require the Client (or its agent) to authorise commencement of the Works in writing. The Contractor shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
- 7.3. The Contractor shall not be held responsible for any damage to the Works, or delays to provision thereof, caused by outside agents. Where the Client requests the Contractor to repair such damage then the Contractor reserves the right to charge the Client for any costs incurred in rectifying such damage.
- 7.4. The Client acknowledges that successful completion of the Works is subject to the Client providing reasonable access and availability to the job site. Therefore the Contractor is in no way liable for any delays in performance or completion of the Works resulting directly or indirectly from a lack of access or availability including due to other trades and suppliers.
- 7.5. The Contractor shall not be liable whatsoever for any delay to the performance or completion of the Works caused (directly or indirectly) by factors outside of its control including, without limitation, poor weather.
- 7.6. Any on-site delays which are caused by matters outside of Contractor's control, including, without limitation, interference from other trades, materials or machinery not arriving on time, interference from safety officers or Client) which exceed 15 minutes will be charged to Client at Contractor's then standard hourly rate per person provided by Contractor on site.
- 7.7. The Client acknowledges that variations of colour and texture are inherent in concrete. The Contractor shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture of the concrete.
- 7.8. The Client acknowledges that the curing time for concrete can be affected by elements such as temperature, or the weather, and as such the Contractor offers no guarantee as to the length of time the curing process will take.

- 7.9. Detailed drawings of any services that will be embedded in the concrete are to be provided to the Contractor prior to commencement of any works. Whilst all due care will be taken no liability will be accepted by the Contractor for damage to the services or any other element embedded in the concrete.
- 7.10. Unless specified in the quote, the Contractor takes no responsibility for the removal and dumping of dirt required in order for the Works to proceed and has the right to pass on to the Client any and all charges, in full, associated with such removal and dumping of dirt.
- 7.11. The Contractor gives no guarantee (expressed or implied) as to the length of time the curing process will take and/or against cracking of concrete that may occur naturally in the works such as:
- a) hairline cracking of paving and grout; or
  - b) damage caused by contact with chemicals, solvents, oils or any other substances; or
  - c) the effects of elements such as heat exposure or wet weather conditions that prolong the curing process.
- 7.12. 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 however caused, including by way of vandalism. In the event that the concrete is destroyed or damaged by any force or matter not associated with Contractor or beyond Contractor's control, then the cost of repair or replacement shall be borne by the Client.
- 7.13. The Contractor shall not be liable for any defect in the Works if the Client does not follow the Contractor's recommendation to:
- a) water the concrete for a periodically to limit the risk of possible cracking due to weather conditions;
  - b) no foot traffic and/or any vehicles on the concrete for a minimum of forty-eight (48) hours but preferably seven (7) days; and
  - c) no heavy furniture to be placed on the concrete area for a minimum of twenty-four (24) hours.
- 7.14. The Client shall supply an area suitable for washing out the Contractor's equipment and for depositing all unused concrete and slurry.
- 7.12. The Contractor shall be entitled to rely on the completeness and accuracy of any plans, specifications and other information provided by the Client. In the event that

any of this information provided by the Client, and/or marking out of the proposed area by the Client, is incomplete or inaccurate, then the Contractor accepts no responsibility for any loss, damages, or costs however resulting from these inaccuracies and Client shall pay Contractor, at its then standard hourly/daily rates for any work required to be performed by Contractor or any other person as a result of such inaccuracy or incompleteness.

- 7.13 The Contractor is not insured to remove furniture or fittings and will not do so, nor is the Contractor licensed to move gas or electrical appliances.

## **8 Client's Responsibilities**

- 8.1 Unless not required by the Contractor (at the Contractor's sole discretion, the Client must supply the Contractor with complete and accurate information in regards to heights falls, starting points, depth, width, length or any other information required by the Contractor in order to determine concrete placement. The Client shall be liable to the Contractor for any costs whatsoever incurred by the Contractor or work performed by the Contractor (such work to be charged at the Contractor's then standard rates) in connection with the provision of inaccurate or incomplete information
- 8.2 The Client shall ensure that the Contractor has clear and free access to the site at all times to enable them to undertake the Works. The Contractor shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas), unless due to the negligence of the Contractor.
- 8.3 It is the Client's responsibility to:
- a) make the premises available on the agreed date and time, and have all areas clean and clear, to enable Works to be completed in accordance with the agreed work schedule. If the Works are interrupted by the failure of the Client to adhere to the agreed work schedule, any additional costs will be invoiced to the Client as an extra;
  - b) ensure that the site is clear of all equipment, motor vehicles, trampolines, Cubby houses or any encumbrances before the commencement of the Works. The Client further agrees that the failure to comply with this clause 8.2(b), will incur an hourly fee as determined by the Contractor for the removal of same and (when necessary) the reinstatement of same;



- c) remove all fragile items such as glassware, crockery, pot plants, furniture and ornaments. Breakages and damages are the responsibility of the Client. All care taken but no responsibility accepted by the Contractor in this regard;
  - d) If the Client fails to comply with this clause, then the Contractor accepts no responsibility for installation decisions that need to be made by the Contractor in the Client's absence.
  - e) provide all environmental and safety fencing where applicable; and;
  - f) at the Contractor's sole discretion where applicable, termite protection.
- 8.3 Prior to the Contractor commencing the Works, the Client must advise the Contractor of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the site. Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per this clause 8.3.
- 8.4 The Client acknowledges that, in the event asbestos or any other toxic substances are discovered at the site, it is the Client's responsibility to ensure the safe removal of the same. The Client further agrees to indemnify the Contractor against any costs incurred by the Contractor as a consequence of such discovery. Under no circumstances will the Contractor handle removal of asbestos product.
- 8.5 Where the Client has supplied goods for the Contractor to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose, quality and any faults inherent in those goods. The Contractor shall not be responsible for any defects in the Works, or any loss or damage to the goods (or any part thereof), howsoever arising from the use of goods supplied by the Client.

## **9 Compliance with Laws**

- 9.1 The Client and the 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 Works, including any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 9.2 The Client shall obtain (at its own expense) all licenses and approvals that may be required for the Works.

## 10 Title

- 10.1 The Contractor and the Client agree that the Client's obligations to the Contractor for the provision the Works shall not cease (and ownership of the Materials shall not pass) until:
- (a) the Client has paid the Contractor all amounts owing to the Contractor; and
  - (b) the Client has met all other obligations due by the Client to the Contractor in respect of all contracts between the Contractor and the Client.
- 10.2 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Contractor's ownership or rights in respect of the Materials, and this contract, shall continue.
- 10.3 It is further agreed that, until ownership of the Materials passes to the Client in accordance with clause 10.1:
- a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Contractor on request.
  - b) The Client holds the benefit of the Client's insurance of the Materials on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed. The production of these terms and conditions by the Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor to make further enquiries.
  - c) unless the Materials have become fixtures the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials.
  - d) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Contractor.
  - e) the Contractor may commence proceedings to recover the Price notwithstanding that ownership of the Materials has not passed to the Client.

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

- 11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials and any monetary obligations owed by the Client to the Contractor for Works that have previously been provided and that will be provided in the future by the Contractor to the Client.
- 11.3 The Client undertakes to:
- a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to:
    - i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - ii) register any other document required by the PPSA; or
    - iii) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii);
  - b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
  - c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;
  - d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Works in favour of a third party without the prior written consent of the Contractor.
- 11.4 The Contractor and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 11.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Client shall unconditionally ratify any actions taken by the Contractor under clauses 11.3 to 11.5.

- 11.9 Subject to any express provisions to the contrary (including those contained in this clause 11) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

## **12 Security and Charge**

- 12.3 In consideration of the Contractor agreeing to provide Works, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.4 The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 12.5 The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

## **13 Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

- 13.1 The Client must inspect the Works on completion and must within seven (7) days of such time notify the Contractor in writing of any evident defect/damage, error or omission, shortage in quantity, or failure to comply with the description or quotation. The Client must notify any other alleged defect in the Works as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Client must allow the Contractor to inspect/review the Works provided.
- 13.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions ("Non- Excluded Guarantees").
- 13.3 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.

- 13.5 If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6 If the Contractor is required to rectify, re-provide, or pay the cost of re-providing the Works under this clause or the CCA, but is unable to do so, then the Contractor may refund any money the Client has paid for the Works but shall deduct from such refund the value of Works which have been provided to the Client which were not defective.
- 13.7 If the Client is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Works is:
- a) limited to the value of any express warranty (or warranty card) provided to the Client by the Contractor at the Contractor's sole discretion;
  - b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Materials;
  - c) otherwise negated absolutely.
- 13.8 Notwithstanding clauses 13.1 to 13.7 but subject to the CCA, the Contractor shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- a) the Client failing to properly maintain or store the Works;
  - b) the Client using the Works for any purpose other than that for which they were designed;
  - c) the Client continuing to use the Works after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - d) interference with the Works by the Client or any third party without the Contractor's prior approval;
  - e) the Client failing to follow any instructions or guidelines provided by the Contractor;
  - f) fair wear and tear, any accident, or act of God.
- 13.9 Notwithstanding anything else in these Terms and Conditions the Contractor shall not be under any obligation to rectify any defect unless and until Contractor has received payment in full for Works completed.

## **14 Intellectual Property**

- 14.1 Where the Contractor has designed, drawn, written plans or a schedule of Works, or created any Materials for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and Materials shall remain vested in the Contractor, and shall only be used by the Client at the Contractor's discretion. Under no

circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.

- 14.2 The Client warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.
- 14.3 The Client agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or Materials which the Contractor has created for the Client, or digital media of any Works provided by the Contractor to the Client.
- 14.4 Client agrees to allow photographs of the Works (either in progress or when complete) to be taken by Contractor and used by Contractor for promotional purposes.

## **15 Default and Consequences of Default**

- 15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (1%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's contract default fee, and bank dishonour fees).
- 15.3 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the provision of Works to the Client. 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.
- 15.4 Without prejudice to the Contractor's other remedies at law, the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled, and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:

- a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
- b) the Client has exceeded any applicable credit limit provided by the Contractor;
- c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## **16 Cancellation**

- 16.1 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Works to the Client. 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.
- 16.2 The Contractor may cancel any contract to which these terms and conditions apply, or cancel provision of Works at any time before the Works have commenced, by giving written notice to the Client. On giving such notice, the Contractor shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Contractor for Materials already procured. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.3 Client may, by providing at least 24 hours written notice to Contractor, cancel a job. If Client gives more than 2 hours but less than 24 hours' written notice of cancellation, Client shall be liable to pay Contractor a cancellation fee of \$100 inclusive of GST. If Client gives 2 hours or less written notice of cancellation, the Client will be charged, and is liable to pay the full amount of any costs incurred by Contractor including, without limitation subcontractor bills, equipment costs, administration charges, employee/contractor wages, cancellation and call-out fees from any company associated with the proposed Works, the cost of any Materials made to the Client's specifications or specific to the Works and any other charges incurred by Contractor in relation to the proposed Works.
- 16.4 In the event that the Client cancels this contract, or provision of the Works, the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).

## **17 Building and Construction Industry Security of Payment Act 2002**

- 17.1 At the Contractor's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
- 17.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.

## **18 Service of Notices**

- 18.1 Any written notice given under this contract shall be deemed to have been given and received:
- a) by handing the notice to the other party, in person;
  - b) by leaving it at the address of the other party as stated in this contract;
  - c) by sending it by registered post to the address of the other party as stated in this contract;
  - d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
  - e) if sent by email to the other party's last known email address.
- 18.2 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.

## **19 General**

- 19.1 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, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which the Contractor has its principal place of business, and are subject to the jurisdiction of the Melbourne Courts in Victoria.
- 19.3 Subject to clause 13 the Contractor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Contractor of these terms



and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).

- 19.4 The Contractor may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 19.5 The Client cannot licence or assign without the written approval of the Contractor.
- 19.6 The Contractor may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.
- 19.7 The Client agrees that the Contractor may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Contractor to provide Works to the Client.
- 19.8 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.
- 19.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.