

# AEP Commercial Pty Ltd T/A Gasforce – Terms & Conditions of Trade

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| <p>1. <b>Definitions</b></p> <p>1.1 "Client" means the person's, entities 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</p> <p>(a) if there is more than one Client, is a reference to each Client jointly and severally; and</p> <p>(b) if the Client is a partnership, it shall bind each partner jointly and severally; and</p> <p>(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and</p> <p>(d) includes the Client's executors, administrators, successors and permitted assigns.</p> <p>1.2 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history and pricing details; and</p> <p>1.3 "Contract" means the terms and conditions contained herein together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.</p> <p>1.4 "Contractor" means AEP Commercial Pty Ltd T/A Gasforce, its successors and assigns or any person acting on behalf of and with the authority of AEP Commercial Pty Ltd T/A Gasforce.</p> <p>1.5 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client or to be used to enhance or personalize the user's experience on the client's computer. If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.</p> <p>1.6 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).</p> <p>1.7 "Intended Use" means building product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Works.</p> <p>1.8 "Non-Conforming Building Product" means associated building products that are regarded as Non-Conforming for an Intended Use if, when associated with the Works:</p> <p>(a) the product is not, or will not be, safe; or</p> <p>(b) does not, or will not, comply with the relevant regulatory provisions; or</p> <p>(c) the product does not perform to the reasonable level of performance, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.</p> <p>1.9 "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 6 below.</p> <p>1.10 "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Contractor to the Client at the Client's request from time to time to limit the Client's liability to the Client's liability. "Works" or "Materials" shall be interchangeable for the other.</p> <p>1.11 "Worksite" means the address nominated by the Client to which the Materials are to be supplied by the Contractor.</p> <p>2. <b>Acceptance</b></p> <p>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 delivery of any Works.</p> <p>2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.</p> <p>2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by both parties.</p> <p>2.4 The Client acknowledges and accepts that:</p> <p>(a) the supply of Works on credit shall not take effect until the Client has completed a credit application with the Contractor and it has been approved with credit limit established for the account;</p> <p>(b) in the event that the supply of Works requested exceeds the Client's credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery; and</p> <p>(c) the supply of Works on credit orders may be subject to availability and if, for any reason, Materials are not or cease to be available, the Contractor reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 6.2. In all such cases the Contractor shall be entitled to substitute the Materials used in substitution, and also reserves the right to place the Client's order and/or Works on hold, as per clause 7.2 until such time as the Contractor and the Client agree to such changes.</p> <p>2.5 In the event that the Contractor:</p> <p>(a) make an emergency Call-Out for critical equipment after hours or causes the Contractor to cancel or reschedule other work then the Contractor reserves the right to charge a minimum Call-Out fee of one (1) hour labour cost plus per kilometre travel rate plus any Materials used to undertake the Works unless otherwise agreed between the Contractor and the Client; or</p> <p>(b) provide the Works urgently, that may require the Contractor's staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then the Contractor reserves the right to charge the Client additional labour costs (penalty rates will apply at time and a half normal rates), unless otherwise agreed between the Contractor and the Client.</p> <p>2.6 If the Contractor has been requested by the Client to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.</p> <p>2.7 Electronic signatures shall be deemed to be accepted if either party providing to the other a copy of the signed document. The Client shall be deemed to have accepted the Terms and Conditions of Trade and any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p>3. <b>Authorised Representatives</b></p> <p>3.1 The Client acknowledges that the Contractor shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to the Contractor, that person shall have the full authority of the Client to order any Materials, Works and/or services from the Contractor. The Client shall pay for all Materials it orders from the Contractor notwithstanding that such Materials suffer from a Client Error and notwithstanding that the Client has not taken or refused to take delivery of such Materials. The Contractor is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.</p> <p>4. <b>Errors and Omissions</b></p> <p>4.1 The Client acknowledges and accepts that the Contractor shall, without prejudice, accept any liability for any error or omission (actual or not) or omission:</p> <p>(a) resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this Contract; and/or</p> <p>(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Works.</p> <p>4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or willful misconduct of the Contractor, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.</p> <p>4.3 In circumstances where the Client is required to place an order for Materials, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Materials (whether they are made to order Materials or not) ("Client Error"). The Client must pay for all Materials it orders from the Contractor notwithstanding that such Materials suffer from a Client Error and notwithstanding that the Client has not taken or refused to take delivery of such Materials. The Contractor is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.</p> <p>5. <b>Change in Control</b></p> <p>5.1 The Client shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client 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 numbers, change of trustees, 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.</p> <p>6. <b>Price and Payment</b></p> <p>6.1 At the Contractor's sole discretion the Price shall be either:</p> <p>(a) as indicated on invoices provided by the Contractor to the Client in respect of Works performed or Materials supplied; or</p> <p>(b) the Contractor's quoted Price (subject to clause 6.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.</p> <p>6.2 The Contractor reserves the right to change the Price:</p> <p>(a) if a variation to the Materials which are to be supplied is requested; or</p> <p>(b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or</p> <p>(c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to the Worksite access and/or crawl spaces, prerequisite work by third party not being completed, inaccurate measurements, plans or specifications supplied by the Client, hard rock or other barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring, etc.) which are only discovered on commencement of the Works; or</p> <p>(d) as a result of an increase in the Contractor's costs due to changes in labour, government or local body rates, levies, etc. with respect to the Works, increases to the Contractor in the cost of labour or Materials or due to relevant industry awards (e.g. Worksite allowance and severance pay), which are outside the control of the Contractor.</p> <p>6.3 Variations will be charged for on the Contractor's quotation and will be detailed in writing, and shown as variations on the Contractor's invoice. The Client shall be required to respond to any variation submitted by the Contractor within ten (10) days. Failure to do so will entitle the Contractor 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>6.4 At the Contractor's sole discretion, a non-refundable deposit may be required.</p> <p>6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date determined by the Contractor, which may be:</p> <p>(a) on completion of the Works; or</p> <p>(b) by way of progress payments in accordance with the Contractor's specified progress payment schedule. Such progress payment claims may include the reasonable value of the Contractor's variations and the value of any Materials delivered to the Worksite but not yet installed; or</p> <p>(c) seven (7) days following the end of the month in which a statement is posted to the Client's address or address for notices;</p> <p>(d) the date specified on any invoice or other form as being the date for payment; or</p> <p>(e) 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.</p> <p>6.6 Payment may be made by electronic on-line banking, credit card (a surcharge may apply), or by any other method as agreed to between the Client and the Contractor. The Contractor may in its discretion allocate any payment received from the Client towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Contractor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Contractor, payment will be deemed to be allocated in such manner as preserves the maximum value of the Contractor's Purchase Money Security Interest (as defined in the PPSA) in the Materials.</p> <p>6.7 The Client shall not be entitled to set off or deduct any amount 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. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify the Contractor in writing of the dispute and fee for the invoice shall remain due and payable for the full amount, until such time as the Contractor investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Contractor placing the Client's account into default and subject to default interest in accordance with clause 18.1.</p> <p>6.8 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 supply by the Contractor to the Client in connection with the sale of the Materials. 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. In addition, 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.</p> <p>7. <b>Provision of the Works</b></p> <p>7.1 Subject to clause 7.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.</p> <p>7.2 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 failure by the Client to:</p> <p>(a) make a selection; or</p> <p>(b) have the Worksite ready for the Works; or</p> <p>(c) notify the Contractor of the Works in ready.</p> <p>7.3 At the Contractor's sole discretion, the cost of delivery is included in the Price. 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, the Contractor will endeavour to ensure 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 the Client a fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.</p> <p>8. <b>Risk</b></p> <p>8.1 If the Contractor retains ownership of the Materials under clause 13 then:</p> <p>(a) where the Contractor is supplying Materials, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place when the Contractor's nominated delivery address (even if the Client is not present at the address);</p> <p>(b) where the Contractor is to both supply and install Materials then the Contractor 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.</p> <p>8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests the Contractor to leave Materials outside the Contractor's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.</p> <p>8.3 The Contractor 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 Contractor accepts no responsibility for any loss, damages, or costs however resulting from these materials being installed on the part of the Contractor.</p> <p>8.4 Any advice, recommendation, information, assistance, or service provided by the Contractor in relation to the Materials or Works supplied is given in good faith to the Client, or the Client's agent and is based on the Contractor's own knowledge and expertise and shall be provided on the basis that the Contractor does not accept any liability or recommendations are not acted upon then the Contractor shall require the Client or their 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.</p> <p>8.5 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any connections (including, but not limited to, meter boxes, man switches, circuit breakers etc) are of suitable capacity to handle the Materials once installed. If, for any reason (including but not limited to, the structure not being watertight, the discovery of asbestos, defective or unsafe wiring, or dangerous access etc.) the Contractor reasonably forms the opinion that the Client's property is not safe for the installation of Materials to proceed then the Contractor shall be entitled to delay installation of the Materials (in accordance with clause 7.2) until the Contractor is satisfied that it is safe for the installation to proceed. The Contractor may in agreement with the Client bring the property up to a standard suitable for installation to proceed but all such Works undertaken, and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.</p> <p>8.6 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify the Contractor immediately upon any proposed changes. The Client agrees to indemnify the Contractor against any additional costs incurred with such a relocation of electrical wiring. All such variations shall be invoiced in accordance with clause 6.2.</p> <p>8.7 The Client acknowledges and accepts that:</p> <p>(a) where the Contractor has performed temporary repairs that:</p> <p>(i) the Contractor offers no guarantee against the recurrence of the initial fault, or any further damage caused; and</p> <p>(ii) the Contractor will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair of the Works;</p> <p>(b) the Contractor is only responsible for components that are replaced by the Contractor and does not at any stage accept any liability in respect of previous goods and/or services supplied by any other third party that subsequently fail; and</p> <p>(c) the Contractor shall not be responsible or liable for any defect in other appliances or power points as a coincidence of the Contractor installing the Materials;</p> <p>(d) any defects in the Materials or appearing in the Works after completion due to the Client or any third party using any items that overloads the structure or system to which the Contractor's Materials are installed or connected to, or by workmanship not performed by the Contractor, shall not be covered by any applicable warranty period; and</p> <p>(e) under no circumstances, will the Contractor handle removal of asbestos product. In the event asbestos (or other hazardous material) is discovered on the Worksite:</p> <p>(i) the Contractor shall suspend the Works;</p> <p>(ii) the Client shall be fully responsible for the resolution of any resulting problems; and</p> <p>(iii) any additional cost incurred by the Contractor shall be added to the Price and/or clause 6.2.</p> <p>(f) Materials supplied may:</p> <p>(i) exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time;</p> <p>(ii) expand, contract or distort as a result of exposure to heat, cold, wetness, or other environmental conditions;</p> <p>(iii) mark or stain if exposed to certain substances;</p> <p>(iv) be damaged or disfigured by impact or scratching; and</p> <p>(v) create undesirable smells caused by a system as a result of its normal operation.</p> <p>8.8 The Contractor accepts no responsibility for any damage or performance related problems with any Materials where they have not been used and/or maintained in accordance with the Contractor's and/or the manufacturers' recommendations.</p> <p>9. <b>Worksite Access and Condition</b></p> <p>9.1 The Contractor is not responsible for the removal of rubbish from or clean-up of the building/construction Worksite. All rubbish generated by the Contractor will be placed in the designated areas appointed by the Client, but the responsibility of removal of same is the Client or the Client's agent, unless otherwise agreed. It is the intention of the Contractor and agreed by the Client that:</p> <p>(a) the Client shall ensure that the Contractor has clear and free access to the Worksite at all times to enable the Contractor to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). The Contractor shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concrete or paved or sealed areas) or to the negligence of the Contractor; and</p> <p>(b) it is the Client's responsibility to provide the Contractor, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities where required.</p> <p>9.2 Where the Contractor requires that Materials, tools etc. required for the Works be stored at the Worksite, the Client shall supply the Contractor a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Client's responsibility. The Client agrees to be present at the Worksite when and as reasonably requested by the Contractor and its employees, contractors and/or agents.</p> <p>9.5 <b>Worksite Inductors</b></p> <p>(a) in the event the Client requires an employee or sub-contractor of the Contractor to undertake a Worksite inductor during working hours, the Client will be liable to pay the hourly charges for that period. If any inductor needs to be undertaken prior to the commencement date then the Client must agree to pay the inductor charges in accordance with the Contractor's standard (and/or overtime, if applicable) hourly labour rate; or</p> <p>(b) where the Contractor is in control of the Worksite, the Client and/or the Client's third party contractors must initially carry out the Contractor's Health &amp; Safety inductor before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by appointment only and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by the Contractor.</p> <p>10. <b>Underground Locations</b></p> <p>10.1 Prior to the Contractor commencing the Works the Client must advise the Contractor of the precise location of all underground services on the Worksite 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 Worksite.</p> <p>10.2 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 clause 10.1.</p> <p>11. <b>Compliance with Laws</b></p> <p>11.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and by-laws of the Commonwealth and other public authorities that may be applicable to the Works, including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.</p> <p>11.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.</p> <p>11.3 Both parties acknowledge and agree:</p> <p>(a) to comply with the National Construction Code of Australia (NCC) and the Building Code of Australia (BCA) and any other applicable laws in respect of all buildings and building products to be supplied during the course of the Works; and</p> <p>(b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.</p> <p>11.4 Where the Client has supplied the Contractor to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in the Contractor's opinion, it is believed that the materials supplied are Non-Conforming products under the Act or state regulations, then the Contractor shall be entitled, without prejudice, to halt the Works until the appropriate conforming materials are sourced and all costs associated with such a change to the plans will be incurred in accordance with clause 6.2.</p> <p>11.5 Prior to installation of any Works, the Contractor shall carry a routine soundness test of the Worksite to ensure there are not any gas leaks in the existing pipework. In the event of such a discovery the Contractor where necessary will have the gas supply capped-off until the fault is found and repaired at the Client's expense.</p> <p>11.6 The Client acknowledges and accepts that in instances where the gas supply is turned off at the meter or bottles by the Contractor in order to carry out the soundness test that parts within a gas appliance may fail due to not being turned off and serviced for a long period of time including, thermocouples, blocked pilot tubes, and S1 valves or pilot assemblies. Any costs associated with such an event shall be borne by the Client.</p> <p>11.7 The Client warrants that any existing plumbing, gasfitting and/or associated services in or upon the Worksite that is subject to the Materials and/or Works are in compliance with regulations. The Contractor reserves the right to halt all Works in accordance with the provisions of clause 7.2 above) if in their opinion the Worksite is unsafe and/or the current positioning of the unit is illegal due to not meeting the required clearances then the Client will be informed of this and will be given a revised quotation to install the unit in a safe and legal position. Should the Client not wish to proceed the Contractor will charge a standard fee for the time spent on Worksite based on the Contractor's quotation.</p> <p>11.8 All work will be tested to ensure that it is electrically safe and is in accordance with the relevant rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with all relevant Australian and New Zealand Wiring standards.</p> <p>12. <b>Modern Slavery</b></p> <p>12.1 For the purposes of this clause:</p> <p>(a) "Act" means the Modern Slavery Act 2018 (cth)</p> <p>(b) "Modern Slavery", "Modern Slavery Statement" and "Reporting Entity" shall have the same meaning as in the Act.</p> <p>12.2 If the Client is a Reporting Entity, it shall comply with all of its obligations under the Act.</p> <p>12.3 Whether the Client is a Reporting Entity or not, the Client shall:</p> <p>(a) use reasonable endeavours to identify, assess and address risks of Modern Slavery practices in its operations and supply chains;</p> <p>(b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;</p> <p>(c) use its reasonable endeavours to ensure that if at any time the Client becomes aware of Modern Slavery practices in its operations and supply chains, the Client must as soon as reasonably practicable take all reasonable steps to address and remove these practices;</p> <p>(d) provide to the Contractor a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and</p> <p>(e) within seven (7) days of the Contractor's request (or such longer period as the Contractor agrees), provide to the Contractor any information or assistance reasonably requested by the Contractor;</p> <p>(i) concerning the Client's compliance with the Act;</p> <p>(ii) concerning the Client's operations and supply chains;</p> <p>(iii) to enable the Contractor to prepare a Modern Slavery Statement or otherwise comply with the Act; or</p> <p>(iv) to enable the Contractor to assess and address risks of Modern Slavery practices in its operations and supply chains.</p> <p>12.4 The parties agree that if any information supplied to the Contractor is true and accurate and may be relied upon for the purposes of the Act. The Client shall indemnify the Contractor against any loss or liability suffered by the Contractor as a result of the Client's breach of this clause 12.</p> <p>12.5 The Client warrants that any information supplied to the Contractor is true and accurate and may be relied upon for the purposes of the Act.</p> <p>12.6 The Client shall indemnify the Contractor against any loss or liability suffered by the Contractor as a result of the Client's breach of this clause 12.</p> <p>13. <b>Title</b></p> <p>13.1 The Contractor and the Client agree that ownership of the Materials shall not pass until:</p> <p>(a) the Client has paid the Contractor all amounts owing to the Contractor; and</p> <p>(b) the Client has met all of its other obligations to the Contractor.</p> <p>13.2 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 guaranteed.</p> <p>13.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 13.1:</p> | <p>6.8 The Contractor accepts no responsibility for any damage or performance related problems with any Materials where they have not been used and/or maintained in accordance with the Contractor's and/or the manufacturers' recommendations.</p> <p>9. <b>Worksite Access and Condition</b></p> <p>9.1 The Contractor is not responsible for the removal of rubbish from or clean-up of the building/construction Worksite. All rubbish generated by the Contractor will be placed in the designated areas appointed by the Client, but the responsibility of removal of same is the Client or the Client's agent, unless otherwise agreed. It is the intention of the Contractor and agreed by the Client that:</p> <p>(a) the Client shall ensure that the Contractor has clear and free access to the Worksite at all times to enable the Contractor to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). The Contractor shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concrete or paved or sealed areas) or to the negligence of the Contractor; and</p> <p>(b) it is the Client's responsibility to provide the Contractor, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities where required.</p> <p>9.2 Where the Contractor requires that Materials, tools etc. required for the Works be stored at the Worksite, the Client shall supply the Contractor a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Client's responsibility. The Client agrees to be present at the Worksite when and as reasonably requested by the Contractor and its employees, contractors and/or agents.</p> <p>9.5 <b>Worksite Inductors</b></p> <p>(a) in the event the Client requires an employee or sub-contractor of the Contractor to undertake a Worksite inductor during working hours, the Client will be liable to pay the hourly charges for that period. If any inductor needs to be undertaken prior to the commencement date then the Client must agree to pay the inductor charges in accordance with the Contractor's standard (and/or overtime, if applicable) hourly labour rate; or</p> <p>(b) where the Contractor is in control of the Worksite, the Client and/or the Client's third party contractors must initially carry out the Contractor's Health &amp; Safety inductor before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by appointment only and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by the Contractor.</p> <p>10. <b>Underground Locations</b></p> <p>10.1 Prior to the Contractor commencing the Works the Client must advise the Contractor of the precise location of all underground services on the Worksite 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 Worksite.</p> <p>10.2 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 clause 10.1.</p> <p>11. <b>Compliance with Laws</b></p> <p>11.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and by-laws of the Commonwealth and other public authorities that may be applicable to the Works, including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.</p> <p>11.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.</p> <p>11.3 Both parties acknowledge and agree:</p> <p>(a) to comply with the National Construction Code of Australia (NCC) and the Building Code of Australia (BCA) and any other applicable laws in respect of all buildings and building products to be supplied during the course of the Works; and</p> <p>(b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.</p> <p>11.4 Where the Client has supplied the Contractor to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in the Contractor's opinion, it is believed that the materials supplied are Non-Conforming products under the Act or state regulations, then the Contractor shall be entitled, without prejudice, to halt the Works until the appropriate conforming materials are sourced and all costs associated with such a change to the plans will be incurred in accordance with clause 6.2.</p> <p>11.5 Prior to installation of any Works, the Contractor shall carry a routine soundness test of the Worksite to ensure there are not any gas leaks in the existing pipework. In the event of such a discovery the Contractor where necessary will have the gas supply capped-off until the fault is found and repaired at the Client's expense.</p> <p>11.6 The Client acknowledges and accepts that in instances where the gas supply is turned off at the meter or bottles by the Contractor in order to carry out the soundness test that parts within a gas appliance may fail due to not being turned off and serviced for a long period of time including, thermocouples, blocked pilot tubes, and S1 valves or pilot assemblies. Any costs associated with such an event shall be borne by the Client.</p> <p>11.7 The Client warrants that any existing plumbing, gasfitting and/or associated services in or upon the Worksite that is subject to the Materials and/or Works are in compliance with regulations. The Contractor reserves the right to halt all Works in accordance with the provisions of clause 7.2 above) if in their opinion the Worksite is unsafe and/or the current positioning of the unit is illegal due to not meeting the required clearances then the Client will be informed of this and will be given a revised quotation to install the unit in a safe and legal position. Should the Client not wish to proceed the Contractor will charge a standard fee for the time spent on Worksite based on the Contractor's quotation.</p> <p>11.8 All work will be tested to ensure that it is electrically safe and is in accordance with the relevant rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with all relevant Australian and New Zealand Wiring standards.</p> <p>12. <b>Modern Slavery</b></p> <p>12.1 For the purposes of this clause:</p> <p>(a) "Act" means the Modern Slavery Act 2018 (cth)</p> <p>(b) "Modern Slavery", "Modern Slavery Statement" and "Reporting Entity" shall have the same meaning as in the Act.</p> <p>12.2 If the Client is a Reporting Entity, it shall comply with all of its obligations under the Act.</p> <p>12.3 Whether the Client is a Reporting Entity or not, the Client shall:</p> <p>(a) use reasonable endeavours to identify, assess and address risks of Modern Slavery practices in its operations and supply chains;</p> <p>(b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;</p> <p>(c) use its reasonable endeavours to ensure that if at any time the Client becomes aware of Modern Slavery practices in its operations and supply chains, the Client must as soon as reasonably practicable take all reasonable steps to address and remove these practices;</p> <p>(d) provide to the Contractor a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and</p> <p>(e) within seven (7) days of the Contractor's request (or such longer period as the Contractor agrees), provide to the Contractor any information or assistance reasonably requested by the Contractor;</p> <p>(i) concerning the Client's compliance with the Act;</p> <p>(ii) concerning the Client's operations and supply chains;</p> <p>(iii) to enable the Contractor to prepare a Modern Slavery Statement or otherwise comply with the Act; or</p> <p>(iv) to enable the Contractor to assess and address risks of Modern Slavery practices in its operations and supply chains.</p> <p>12.4 The parties agree that if any information supplied to the Contractor is true and accurate and may be relied upon for the purposes of the Act. The Client shall indemnify the Contractor against any loss or liability suffered by the Contractor as a result of the Client's breach of this clause 12.</p> <p>12.5 The Client warrants that any information supplied to the Contractor is true and accurate and may be relied upon for the purposes of the Act.</p> <p>12.6 The Client shall indemnify the Contractor against any loss or liability suffered by the Contractor as a result of the Client's breach of this clause 12.</p> <p>13. <b>Title</b></p> <p>13.1 The Contractor and the Client agree that ownership of the Materials shall not pass until:</p> <p>(a) the Client has paid the Contractor all amounts owing to the Contractor; and</p> <p>(b) the Client has met all of its other obligations to the Contractor.</p> <p>13.2 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 guaranteed.</p> <p>13.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 13.1:</p> |
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# AEP Commercial Pty Ltd T/A Gasforce – Terms & Conditions of Trade

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| <p>(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;</p> <p>(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;</p> <p>(c) the production of these terms and conditions by the Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries;</p> <p>(d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand;</p> <p>(e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as if so directed;</p> <p>(f) unless the Materials become fixtures the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and receive possession of the Materials;</p> <p>(g) the Contractor may recover possession of any Materials in transit whether or not delivery has occurred;</p> <p>(h) 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;</p> <p>(i) the Contractor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.</p> <p><b>14. Personal Property Securities Act 2009 ("PPSA")</b></p> <p>14.1 In this clause "financial statement" means a financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.</p> <p>14.2 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. The Client's interest in all Materials and/or collateral (account) – being a monetary obligation of the Client to the Contractor for Works – that have previously been supplied and that will be supplied in the future by the Contractor to the Client.</p> <p>14.3 The Client undertakes to:</p> <p>(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:</p> <p>(i) register a financing change statement or a financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA;</p> <p>(iii) correct a defect in a statement referred to in clause 14.3(a)(i) or 14.3(a)(ii);</p> <p>(b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing change statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;</p> <p>(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of the Contractor;</p> <p>(e) immediately advise the Contractor 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.</p> <p>14.4 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.</p> <p>14.5 The Client hereby consents to the registration of notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.</p> <p>14.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>14.7 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.</p> <p>14.8 The Client shall unconditionally ratify any actions taken by the Contractor under clauses 14.3 to 14.5.</p> <p>14.9 Subject to any express provisions to the contrary (including those contained in this clause 14), 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><b>15. Security and Charge</b></p> <p>15.1 In consideration of the Contractor agreeing to supply the Materials, 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, and the Client grants to the Contractor a security interest in the after-acquired property for the purposes of, including but not limited to registering the Contractor's security interest over the Client on the PPSA, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any amounts due).</p> <p>15.2 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.</p> <p>15.3 The Client irrevocably appoints the Contractor as each director of the Contractor as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.</p> <p><b>16. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</b></p> <p>16.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify the Contractor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Contractor to inspect the Materials or to re-visit the Works provided.</p> <p>16.2 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).</p> <p>16.3 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>16.4 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, without limitation, 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.</p> <p>16.5 If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited by section 64 of the CCA.</p> <p>16.6 If the Contractor is required to replace any Materials under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Client has paid for the Materials.</p> <p>16.7 If the Contractor is required to re-supply, re-fix, or pay the cost of re-supplying 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 only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.</p> <p>16.8 If the Client is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Materials is:</p> <p>(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;</p> <p>(b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Materials;</p> <p>(c) otherwise negated absolutely.</p> <p>16.9 Subject to this clause 16, returns will only be accepted provided that:</p> <p>(a) the Client has complied with the provisions of clause 16.1; and</p> <p>(b) the Contractor has agreed that the Materials are defective; and</p> <p>(c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and</p> <p>(d) the Materials are returned in as close a condition to that in which they were delivered as is possible.</p> <p>16.10 Notwithstanding clauses 16.1 to 16.9 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:</p> <p>(a) the Client failing to properly maintain or store any Materials;</p> <p>(b) the Client using the Materials for any purpose other than that for which they were designed;</p> <p>(c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;</p> <p>(d) interference with the Works by the Client or any third party without the Contractor's prior approval;</p> <p>(e) the Client failing to follow any instructions or guidelines provided by the Contractor;</p> <p>(f) fair wear and tear, any accident, or act of God.</p> <p>16.11 In the event of second hand Materials, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Materials prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Contractor as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that the Contractor has</p> | <p>agreed to provide the Client with the second hand Materials and calculated the Price of the second hand Materials in reliance of this clause 16.11.</p> <p>The Contractor may in its absolute discretion accept non-defective Materials for return to twenty-five percent (25%) of the value of the returned Materials plus any freight costs.</p> <p>Notwithstanding anything contained in this clause if the Contractor is required by a law to accept a return then the Contractor will only accept a return on the conditions imposed by that law.</p> <p>Subject to clause 16.1, customised, or non-stockist items or Materials made or ordered to the Client's specifications are not acceptable for credit or return.</p> <p><b>Intellectual Property</b></p> <p>Where the Contractor has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents and other products 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.</p> <p>The Client warrants that all design 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.</p> <p>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 products which the Contractor has created for the Client.</p> <p><b>Default and Consequences of Default</b></p> <p>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 (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such rate after as well as before any judgment).</p> <p>If the Client owes the Contractor any money, the Client shall indemnify the Contractor from and against all costs and disbursements:</p> <p>(a) incurred, and/or</p> <p>(b) which would be incurred and/or</p> <p>(c) for which by the Client would be liable;</p> <p>in regard to legal costs on a solicitor and own client basis, infernal administration fees, the Contractor's contract fees owing for breach of these terms and conditions, including but not limited to, contractor default fees and/or recovery costs (if applicable), as well as bank dishonour fees.</p> <p>Further to any other rights or remedies the Contractor may have under this Contract, if a Client has made payment to the Contractor, and the transaction is subsequently reversed, the Client shall remain liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.</p> <p>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:</p> <p>(a) the Client is in arrears to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;</p> <p>(b) the Client has exceeded any applicable credit limit provided by the Contractor;</p> <p>(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</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p> <p><b>Cancellation</b></p> <p>19. Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation or condition relating to the Works 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.</p> <p>The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are 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 Works, less any amounts owing by the Client to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>In the event that the Client cancels the delivery of Works the Client shall be liable for any all loss incurred (including but not limited to, any loss of profits). Cancellation of orders for products made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p><b>Privacy Policy</b></p> <p>20. All emails, documents, images or other recorded information held or used by the Contractor for Personal Information, as defined and referred to in clause 20.5, and therefore considered Confidential Information. The Contractor acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part III of the Act and the Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation ("GDPR") (collectively, "EU Data Privacy Laws"). The Contractor acknowledges that in the event it becomes aware of any data breach and/or disclosure of the Client's Personal Information held by the Contractor, it may result in serious harm to the Client, the Contractor will notify the Client in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent unless subject to an order of law.</p> <p>Notwithstanding clause 20.1, privacy limitations will extend to the Contractor in respect of Cookies where the Client utilizes the Contractor's website to make enquiries. The Contractor agrees to display reference to such Cookies and/or tracking technologies such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:</p> <p>(a) IP address, browser, email client type and other similar details;</p> <p>(b) tracking website usage and traffic; and</p> <p>(c) device identifiers such as pixels and web beacons (if applicable).</p> <p>20.5 The Client, so the Contractor may collect and review that information ("collectively Personal Information")</p> <p>If the Client consents to the Contractor's use of Cookies on the Contractor's website the Client agrees to the Contractor's use of Cookies to manage and control the Contractor's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.</p> <p>The Client agrees for the Contractor to obtain from a credit reporting body (CRB) a credit report containing personal information (including name, date of birth, D.O.B. and occupation, driver's license details, electronic credit (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided to the Contractor and web beacons (if applicable).</p> <p>The Client agrees that the Contractor may exchange information about the Client with those credit providers and with related body corporates for the following purposes:</p> <p>(a) to assess an application by the Client; and/or</p> <p>(b) to notify other credit providers of a default by the Client; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or</p> <p>(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.</p> <p>The Client consents to the Contractor being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.</p> <p>The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other agreed purposes or required by the provision of Works; and/or</p> <p>(a) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or</p> <p>(b) processing of any payment, instructions, direct debit facilities and/or credit facilities requested by the Client; and/or</p> <p>(c) enabling the collection of amounts outstanding in relation to the Works.</p> <p>The Contractor may give information about the Client 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 Client including credit history.</p> <p>The information given to the CRB may include:</p> <p>(a) Personal Information as disclosed in 20.3 above;</p> <p>(b) name of the credit provider and that the Contractor is a current credit provider to the Client;</p> <p>(c) whether the credit provider is a licensee;</p> <p>(d) type of consumer credit;</p> <p>(e) details concerning the Client'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 (provided the Contractor is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by</p> | <p>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 Client no longer has any overdue accounts and the Contractor 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 Contractor, the Client has committed a serious credit infringement;</p> <p>(h) a default in the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).</p> <p>The Client shall have the right to request (by e-mail) from the Contractor:</p> <p>(a) a copy of the Personal Information about the Client retained by the Contractor and the right to request that the Contractor correct any incorrect Personal Information; and</p> <p>(b) that the Contractor does not disclose any Personal Information about the Client for the purpose of direct marketing.</p> <p>The Contractor will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.</p> <p>The Client can make a privacy complaint by contacting the Contractor via e-mail. The Contractor 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 Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at <a href="http://www.oaic.gov.au">www.oaic.gov.au</a>.</p> <p><b>Unpaid Seller's Rights</b></p> <p>Where the Client has left any item with the Contractor for repair, modification, or for the Contractor to perform any other service in relation to the item and the Contractor has not received or been tendered the whole of any monies owing to it by the Client, the Contractor shall have, until all monies owing to the Contractor are paid:</p> <p>(a) a lien on the item; and</p> <p>(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.</p> <p>The lien of the Contractor shall continue despite the commencement of proceedings in judgment for any monies owing to the Contractor having been obtained against the Client.</p> <p><b>Building and Construction Industry Security of Payments Act 1999</b></p> <p>At the Client'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 Payments Act 1999 may apply.</p> <p>Nothing in this Contract is intended to have the effect of contracting out of any such provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.</p> <p><b>Service of Notices</b></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), on receipt of confirmation of the transmission;</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><b>Trusts</b></p> <p>24. If the Client at any time upon or subsequent to entering into the Contract is acting as trustee of any trust (including a Trust) then whether or not the Contractor may have notice of the Trust, the Client covenants with the Contractor as follows:</p> <p>(a) the Contractor extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;</p> <p>(b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of the trust or be a party to any other action which might prejudice that right of indemnity.</p> <p>(c) the Client will not without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer proceedings to be taken in relation to the Trust, including:</p> <p>(i) the removal, replacement or retirement of the Client as trustee of the Trust;</p> <p>(ii) any alteration to or variation of the terms of the Trust;</p> <p>(iii) any advancement or distribution of the capital of the Trust; or</p> <p>(iv) any resettlement of the trust property.</p> <p><b>General</b></p> <p>25. In the event of a dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the dispute. The parties shall share equally the mediator's fees, should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.</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. 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.</p> <p>25.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the Hornsby Courts in that state. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).</p> <p>25.4 Subject to clause 16, 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).</p> <p>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.</p> <p>The Client cannot licence or assign without the written approval of the Contractor.</p> <p>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.</p> <p>The Client agrees that the Contractor may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to 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.</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, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party.</p> <p>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.</p> <p>The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.</p> | <p>20.9</p> <p>20.10</p> <p>20.11</p> <p>21.1</p> <p>21.2</p> <p>22.1</p> <p>22.2</p> <p>23.1</p> <p>23.2</p> <p>24.1</p> <p>24.2</p> <p>25.1</p> <p>25.2</p> <p>25.3</p> <p>25.4</p> <p>25.5</p> <p>25.6</p> <p>25.7</p> <p>25.8</p> <p>25.9</p> <p>25.10</p> <p>25.11</p> |

**Client/s Initials:**  
 Date: \_\_\_\_\_