

# Bradley Trade Services Terms and Conditions

## Definition of PC Sum & Provisional Sum:

A **PC** item is an amount of money included in a contract **sum** to purchase a specified item such as tiles, taps, doors or bathroom fittings.

... A **provisional sum** is an amount of money included in the contract **sum** to cover work or materials, or both, the extent of which cannot be specifically detailed when entering a contract.

## Terms of Trade

### 1. Application of the Terms

- 1.1 The Customer agrees that the Customer has read and agreed to the terms and conditions as set out in these terms of trade (**Terms**).
- 1.2 These Terms apply to all work performed by the Contractor, whether arising from a Quote, or otherwise. To avoid doubt, a Quote may include additional terms. If the Quote includes additional terms, the additional terms prevail over these Terms to the extent of any inconsistency, and only apply to the work performed under that Quote.
- 1.3 For the purposes of the Terms:
  - (a) **“Contractor”** is **Bradley Trade Services Pty Ltd t/as Bradley Painting** (ABN: 25 151 426 505) of 6 Tooronga Avenue, Edwardstown SA 5039;
  - (b) **“Contract”** means the agreement between the Contractor and the Customer upon the Terms.
  - (c) **“Customer”** means the person instructing the Contractor to undertake the Works (referred to or specified in the Quote) and any representatives, successors and permitted assigns, agents, employees, servants and officers;
  - (d) **“Price”** means the amount payable for the Works as agreed between the Contractor and the Customer pursuant to a Quote.
  - (e) **“Works”** means the goods and works that the Contractor agrees to supply, perform and/or install for the Customer as specified in any accepted Quote (excluding any works not included in the corresponding scope of works or those works listed in writing as exclusions);
  - (f) **“Terms”** means the terms and conditions as set out hereunder and overleaf which constitute the agreement between the Contractor and the Customer for the provision of works, services and/or materials;
  - (g) **“Quote”** means this document, including the covering letter, scope of works, Terms and quote acceptance documents.
- 1.4 This clause applies to domestic building work other than minor domestic building work (within the meaning of the *Building Work Contractors Act 1995*). The Customer agrees and warrants that it has been provided with a hard copy of Form 1 (Your Building Contract: Your Rights and Obligations by the Contractor) prior to signing into these Terms. A copy of this document is available to the Customer for inspection at <https://www.cbs.sa.gov.au/files/form-1-building-contract-rights-and-obligationspdf>.
- 1.5 In these Terms, except where the context otherwise permits:
  - (a) singular includes plural and plural includes singular;
  - (b) words of one gender include both other genders;
  - (c) reference to legislation includes any amendment to it, any legislation substituted for it, and any statutory instruments issued under it and in force;
  - (d) reference to a person includes a corporation, a firm and any other entity;
  - (e) reference to a party includes that party's representatives, successors and permitted assigns, agents, employees, servants and officers;

- (f) if a party comprises more than one person, each of those persons is jointly and severally liable under these Terms;
- (g) headings do not affect interpretation;
- (h) a provision must not be construed against a party only because that party put the provision forward; and
- (i) a provision must be read down to the extent necessary to be valid, and if it cannot be read down to that extent, it must be severed and will not affect the validity of the remaining terms.

### 2. Quotes

- 2.1 Where the Contractor has given the Customer a Quote:
  - (a) the Contractor need not commence work until the Quote has been accepted in writing by the Customer;
  - (b) the Customer shall accept the Quote by providing written acceptance or permitting, directing or instructing the Contractor to commence any part of the work;
  - (c) acceptance by the Customer of the Quote will constitute acceptance by the Customer of these Terms and form a Contract between the parties for the performance of the works the subject of the Quote;
  - (d) Quotes are valid for 30 days only, unless an extension has been authorised by the Contractor; and
  - (e) The Contractor may, at its absolute discretion, and without incurring any liability to the Customer whatsoever, revise, withdraw or extend the Quote at any time and for any reason prior to acceptance.
- 2.2 The copyright in all plans, sketches, design ideas and custom-made solutions which appear in the Contractor's Quote shall be the property of the Contractor. On payment of all invoices for the works, The Customer will be granted a non-transferrable, non-exclusive licence to use the works for the specific purpose set out in the Quote.

### 3. Scope of Works

- 3.1 Except, and only to the extent that, the Quote expressly specifies, and without limiting anything else in the Terms, the Works do not include:
  - (a) Work outside of usual business hours;
  - (b) Plans, local authority approvals and engineering costs (unless otherwise stated); and
  - (c) Anything that is expressly or by implication excluded in these Terms, the Quote, or any other document provided by the Contractor in relation to the Works.
- 3.2 The Contractor will use reasonable endeavours to ensure that the Works are properly supervised and carried out in accordance with the relevant documents and specifications, in a regular and workmanlike manner, using suitable methods, materials, reasonable skill, care and diligence. The parties acknowledge that the performance and efficacy of the Works may be affected by the actions of third parties and environmental conditions including without limitation, the number of hours of sunlight, cloud cover, weather patterns, and the location of the Works.
- 3.3 The Customer acknowledges and agrees that the Contractor may engage its employees or any third party for the purposes of providing the Works, provided that such person(s) are careful, skilled and experience in their respective trades or occupations. The Contractor shall be solely responsible for any and all payment to any such employee or third party for

- the part of the Works performed by it. The Customer must not give or purport to give any directions to any person other than the Contractor's nominated supervisor (as set out in the Quote or as otherwise notified by the Contractor in writing).
- 3.4 The Customer shall give all necessary applications and notices, pay all necessary fees, and will comply with all provisions and requirements statutory or otherwise relevant to the Works. Any extra work required or costs incurred to comply with Acts, By-Laws and/or Regulations will be treated as a variation.
- 3.5 The Customer shall ensure that all unfixed materials on the site or such other part of the Works that may be carried out by the Contractor shall be protected from damage caused by any person not being an employee or agent of the Contractor, and shall be responsible for any damage caused by such persons.
- 3.6 Where the Contractor provides advice or recommendations to the Customer regarding the performance of the Works (including, but not limited to, the suitability of the site or premises for certain works) and such advice or recommendations are not acted upon, the Contractor will require the Customer to authorise the commencement of the Works the subject of the advice or recommendations. The Contractor is not liable in any way whatsoever for any loss or damage that occurs after the commencement of those Works.
- 3.7 The Customer takes full responsibility for the Works from the time of completion (the point at which the Works are substantially complete).
- 4. Commencement and Completion**
- 4.1 The Contractor performs the Works, including site visits, at its sole discretion and in accordance with its business schedule. The Contractor does not provide any guarantees in relation to the progress of the Works from commencement to the completion date.
- 4.2 The progress of the Contractor's performance of the Works is subject to the prompt availability and supply of:
- full information, documents, requirements, directions or decisions from the Customer, which are to be true, accurate and sufficient to enable the Contractor to perform the Works in accordance with the Terms;
  - materials and goods from suppliers;
  - free, safe, level and unrestricted access to the relevant site or premises at all reasonable times as required;
  - where clause 5.5 applies, the payment authority executed by the Customer and conveyancer; and
  - any other matter the Contractor determines is reasonably required or is necessary for the performance of the Works.
- 4.3 Any failure in respect to the circumstances outlined in clause 4.2 will justify a reasonable extension of time and any completion date will be extended commensurately.
- 4.4 Any commencement and completion dates that are provided to the Customer by the Contractor are estimates only, and are given in good faith according to the present conditions and circumstances in the control of the Contractor, and the best information available to the Contractor.
- 4.5 The Contractor does not accept any liability, and the Customer indemnifies the Contractor in all respects against liability, claims and expenses associated with any failure to commence or complete the Works within a specific timeframe (unless, and only to the extent that, this clause is expressly waived in writing by the Contractor).
- 4.6 The Contractor shall be entitled to claim, and be allowed, a reasonable extension of time in respect of any delay to the completion of the Works not caused by, or attributable to, any act or default of the Contractor or any of its employees or agents, that the Contractor could not have foreseen at the time the Contract was formed between the parties.
- 4.7 Should the Works be delayed by the Customer or by any other reason not being caused by the Contractor's employees or agents after the commencement of the Works, the Customer shall reimburse or make good any loss or damage sustained by the Contractor.
- 4.8 The Customer will not be entitled to, and must not, take possession of the Works unless and until the Works have been completed and the Contractor returns possession of the Site to the Customer. Should the Customer take possession of any part of the Works then, without limiting the Contractor's rights, the Works are deemed to be complete and defect-free, and payment of the Price is due and payable in accordance with clause 5.
- 5. Price and Payment**
- 5.1 In consideration of the performance of the Works, the Customer will pay the Contractor the Price.
- 5.2 The Price will comprise the lump sum price estimate as expressed in the Quote and any variations in accordance with clause 6 below. The Price is an estimate only and is subject to change by variation.
- 5.3 The Price (including rates, as applicable) is subject to adjustment for rise and fall in the costs of materials, goods, labour, plant and equipment for any cause whatsoever.
- 5.4 Unless agreed otherwise:
- The Price will be invoiced progressively by the Contractor for the portion of the Works completed and the materials paid for by the Contractor by way of progress claims at fortnightly intervals, or as otherwise agreed between the parties in writing.
  - The Contractor may invoice the Customer in respect of a variation on completion of the variation, or as otherwise agreed between the parties.
  - The Customer must pay the Contractor the total amount set out in the invoice upon receipt of receiving the Contractor's invoice.
- 5.5 *Payment upon settlement*
- This clause 5.5 applies to the exclusion of clause 5.4 where the Contractor and Customer agree that payment of the Price is to be made upon settlement of the property the subject of the Works.
  - The Customer must provide the Contractor with a copy of the payment authority executed by the Customer and the conveyancer prior to the commencement of the Works ("the Payment Authority"). The Contractor is not required to commence the Works, and is under no obligation to do so (nor incurs any liability in relation to same), until the Customer has provided the executed Payment Authority.
  - The Payment Authority is an irrevocable authority, and the Customer indemnifies the Contractor for any costs, expenses, loss or damage associated with any attempt by the Customer to revoke the Payment Authority or failure to make payment of the Price pursuant to the Payment Authority.
  - The Customer must, within one (1) day of the settlement of the property the subject of the Works, pay the Contractor the Price as adjusted in accordance with these Terms and the Contract.
  - Where:
    - the Customer changes the real estate agent for the property the subject of the Works;
    - the Customer attempts to revoke the Payment Authority; or
    - the property the subject of the Works has not been sold and is still on the market after two (2) months following completion of the Works;
 the Price will be a debt immediately due and payable by the Customer.
- 5.6 The Customer is not entitled to make any deductions or retain any amount owing to the Contractor, notwithstanding any default or alleged default by the Contractor of these Terms, including (but not limited to) defective Works, delay in performance of the Works, retention, security, liquidated damages or other conditions. Any retention or deduction will not be accepted by the Contractor, unless specifically nominated by the Contractor in writing. The Customer provides a corresponding indemnity.
- 5.7 The Contractor may require a progress claim from the Customer. If a progress claim is requested by the Contractor, the Customer acknowledges the Contractor is under no obligation to undertake any of the Works as requested by the Customer until the progress claim is received by the Contractor in full and all details pertaining to the Terms and Contract are finalised. In the event of default as to payment owing to the Contractor on the part of the Customer, the

- Contractor shall be entitled to forfeit the progress claim and claim any profit or margin contemplated by, or allowed for, in the Terms and Contract in addition to any remedy available to the Contractor at law or in equity.
- 5.8 As security for the payment of the Price (including all monies that may become payable and any outstanding amounts) and any other costs and expenses incurred by the Contractor, the Customer with full title guarantee hereby charges (and agrees to charge) to the Contractor all of its interest in and to all of the property the subject of the Works.
- 5.9 If any invoice or amount is due but unpaid at the expiry of seven (7) days after the period prescribed for payment of the invoice or amount under clauses 5.4 or 5.5, the Contractor:
- may withhold, halt or suspend any further Works (or part thereof) until overdue and outstanding amounts have been paid in full;
  - is granted an automatic extension of time to any discussed timetable or deadlines for the period of work stoppage under this clause;
  - may charge interest on all overdue amounts at the rate of 2% per year above the commercial lending rate of the business bank used by the Contractor from time to time, calculated daily from the date the payment became due;
  - may require the Customer to pay, in advance, for any Works (or any part thereof) which have not yet been performed;
  - will be entitled to lodge and maintain a caveat on the property the subject of the Works pursuant to clause 5.8; and
  - will not be taken to be in breach of any requirement of the Terms, whether express or implied, by exercising a right under this clause 5.9.
- 5.10 To avoid any doubt, a failure to make payment of any invoice or amount under the Terms is a material breach for the purposes of clause 14.1(a).
- 5.11 The Contractor may, in its absolute discretion, apply any payment received from the Customer to any amount owing by the Customer to the Contractor.
- 5.12 The Customer must pay to the Contractor any costs, expenses or losses incurred by the Contractor as a result of the Customer's failure to pay to the Contractor all outstanding and overdue amounts owed by the Customer to the Contractor, including without limitation any debt collection and legal costs incurred in enforcing payment.
- 5.13 The Price is based on construction commencing within one (1) month of the date of the Quote. Without limiting any other term, the Contractor is entitled to a variation if construction does not commence within two (2) months, with the variation to include any additional cost of increases in the supply of materials, goods, labour, plant and equipment required for the Works from the date of the Quote.
- 5.14 The Customer and the Contractor agree to comply with their obligations in relation to Goods and Services Tax (GST) under the *A New Tax System (Goods and Services Tax) Act 1999* and any other applicable legislation governing GST.
- 6. Variations**
- 6.1 The parties may agree to vary the scope of the Works in writing, and such variation shall not vitiate the Terms and Contract.
- 6.2 Where the scope of the Works is varied, or reasonably required as a result of the Customer's conduct (including, but not limited to, providing inadequate or inaccurate information, or the late provision of same), the Contractor shall be entitled to claim further payment (as agreed between the parties) and a reasonable extension of time for such variation (as applicable).
- 6.3 Except where authorised by these Terms, any variation to the scope of the Works must:
- be in writing and signed by both the Customer and the Contractor;
  - state the scope of the Works that are the subject of the variation;
  - state the reason for the variation; and
  - state the change in the Price by reason of the variation.
- 6.4 If the amount of a variation is not agreed prior to commencement, the price of the extra work shall be either (and at the sole election of the Contractor):
- the Contractor's rates and prices as varied from time to time; or
  - the actual cost incurred by the Contractor (including but not limited to materials, travel time, labour at the charge up rate of \$85 per hour and GST) together with an additional percentage of 15% of the actual cost.
- 6.5 Where a variation has been agreed, the Contractor is not required to commence the Works the subject of the variation until the Customer has made payment for that variation.
- 6.6 The Customer shall indemnify the Contractor for any additional cost incurred by the Contractor should the Customer increase the scope of the Works to be provided by the Contractor.
- 7. Site and Site Conditions**
- 7.1 The Customer shall give the Contractor, its employees, agents and contractors, free, safe, level and unrestricted access to, and uninterrupted possession of, the relevant site or premises at all reasonable times to enable it to commence and proceed with the Works.
- 7.2 The Contractor will perform the Works at its discretion on the site or premises during the span of hours 6:00am to 6:00pm, Monday to Friday (unless otherwise stated). Any Works conducted outside of these hours will only be at the request of the Customer and agreement of the Contractor, and will be treated as a variation.
- 7.3 Unless otherwise stipulated, the Customer shall provide all facilities required by the Contractor for the performance of the Works, including but not limited to accommodation for protecting goods, materials and plants, free use of water, electricity and sanitary facilities, and such other facilities as may be reasonable required by the Contractor.
- 7.4 The Customer shall allow the Contractor to use the site or premises as reasonably required to enable the Contractor to perform the Works (including but not limited to, for cleaning the Contractor's plant and equipment).
- 7.5 In the event that the Contractor encounters tolerances in the building structures and components, or any other factor which is not in accordance with Australian Standards and/or industry standards, or latent conditions not reasonably obvious or discoverable on a superficial inspection, the reasonable cost to overcome these conditions will be added to the amount due and payable by the Customer as a variation.
- 7.6 The Works may require control and use of adjoining areas of the site or premises. The Customer will comply with any reasonable request for use of same.
- 7.7 The Contractor will take reasonable steps to minimise any damage to the site or premises, but some damage may be unavoidable as a consequence of the Works.
- 7.8 The Customer acknowledges that they have been notified of the potential risks associated with the Works and accept such risks. The Contractor will not accept liability in respect to any damage to the Customer's property (except in respect to gross negligence or wilful damage) to the extent permitted by law (excepting statutory rights that cannot be excluded), and the Customer provides the Contractor with a corresponding indemnity.
- 8. Information**
- 8.1 The Customer must:
- respond promptly and in writing to any requests that the Contractor makes for information, directions or decisions;
  - provide true and accurate information that is sufficient to enable the Contractor to perform the Works in accordance with the Terms;
  - cooperate with the Contractor as the Contractor reasonably requires; and
  - make available to the Contractor such facilities as the Contractor reasonably requires.
- 8.2 To the extent permitted by law, the Contractor takes no responsibility whatsoever and shall not be liable for:
- any loss or damage resulting from any information, documents, directions, decisions or other matters provided by the Customer (or any other persons

- engaged by the Customer) to the Contractor in relation to the Terms or the Works; and
- (b) loss, damage, costs or expenses resulting from the Customer deviating from, or insisting on instructions contrary to, the advice, recommendations, information, and assistance provided by the Contractor as a part of the Works.
- 9. Design Responsibility**
- 9.1 If the Customer supplies any design, plans and specifications for the Works, the Contractor takes no responsibility whatsoever and shall not be liable for any loss or damage resulting from any defects in the design, plans and specifications or the compliance or otherwise with Australian Standards where applicable to the extent permitted by law (excepting statutory rights that cannot be excluded).
- 10. Defects**
- 10.1 If the Customer believes the Works are defective, they must notify the Contractor in writing and request the Contractor to rectify the defects. The following procedure will apply in respect to any alleged defect or required rectification:
- (a) The Customer must provide written notice to the Contractor within seven (7) days of becoming aware of the alleged defect;
- (b) The Customer must permit the Contractor an opportunity to investigate and inspect the Works within a reasonable time, including providing reasonable access to the premises as applicable;
- (c) If the Contractor determines (such determination being at their absolute discretion) that the Works are defective, the Contractor will make reasonable attempts to repair the defects within thirty (30) days of completing their investigation (or as agreed between the parties). The Customer will give the Contractor reasonable access during working hours to undertake any work required.
- 10.2 If the Customer does not comply with the above, such conduct will constitute an absolute waiver of any right or claim to rectification, compensation, restitution or other remedy at law or equity (including but not limited to under the Contract or statute), to the extent permitted by law (excepting statutory rights that cannot be excluded) and the Customer provides the Contractor with a corresponding indemnity.
- 11. Warranty**
- 11.1 Except as expressly provided in these Terms and except for any condition or warranty the exclusion of which could be void or otherwise contravene the *Competition and Consumer Act 2010* (Cth) or any other applicable law (**Non-Excludable Guarantees**), the Contractor makes no warranty or other representations, either express or implied, with respect to the Works, including but not limited to the quality or suitability of the Works. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.2 The Australian Consumer Law may give to the Customer certain guarantees (if, and where, applicable). Where such guarantees apply, the Contractor's liability (if any) arising from any breach of those guarantees is limited to the performance of the Works again or cost of re-performing the Works again.
- 11.3 The Contractor shall not be held liable in any way for the incorrect installation of any goods, materials or works relating to the Works by any other party.
- 11.4 Nothing in these terms detracts or limits the Customer's rights under the *Building Work Contractors Act 1995*.
- 12. Confidentiality and Intellectual Property**
- 12.1 For the purpose of this clause:
- (a) Confidential Information means confidential and proprietary information concerning the products, technology, trade secrets, know-how, marketing strategies, financial information, concepts, concept plans, client databases, costing, quotes and business of the Contractor which is disclosed to the Customer or its agents, officers, servants or employees whether before or subsequent to execution of the Terms; and
- (b) Contractor Intellectual Property means the name (in whole or in part), logo, website, associated materials and other intellectual property (whether or not capable of statutory protection), including copyright, designs and trademarks, details of customers and members and know-how, whether created before or after the contract, of the Contractor.
- 12.2 The Customer must not directly or indirectly, without the prior written consent of the Contractor, use, disclose, publish or permit the use, disclosure or publication of Contractor Intellectual Property or Confidential Information, other than in accordance with these Terms. The obligations in this clause survive termination of these Terms.
- 12.3 The Contractor owns the right to all the Contractor Intellectual Property and the Terms and Contract do not convey any interest of a proprietary or any other nature to the Customer or to any other person.
- 12.4 If requested by the Contractor, the Customer must immediately return to the Contractor, or destroy as the Contractor directs, all original documents pertaining to the Works, containing any Confidential Information and or the Contractor Intellectual Property, and any copies of those documents.
- 12.5 For the avoidance of doubt, the copyright in all drawings and data prepared and compiled by the Contractor shall remain in the Contractor and the Customer shall not have right or licence to use such drawings or data without the express written consent of the Contractor.
- 13. Title**
- 13.1 The parties agree that the ownership of the goods and materials delivered by the Contractor to the Customer and whether installed by the Contractor or not, is only transferred to the Customer when it has paid all amounts due and owing to the Contractor whether under this Contract and Terms, or any other contract or agreement. This comprises a security interest pursuant to the *Personal Property Security Act 2009* (Cth), to which the Customer will take reasonable steps to assist the corresponding registration, perfection and enforcement of that security interest.
- 13.2 The Customer will allow the Contractor access to the Site at any time to exercise any right to the goods and materials as outlined in clause 13.1 above or otherwise held by the Contractor at law.
- 13.3 The Customer must not allow any encumbrance over the whole or part of the Contractor's security interest or rights under the Terms. Notwithstanding the previous provisions, the goods and materials, which form part of the Works, shall be at the Customer's risk from the time when they are delivered to the site.
- 14. Termination**
- 14.1 Either party may terminate these terms and condition by notice in writing to the other party if any of the following occur:
- (a) A party breaches a material term of these Terms, and fails to remedy the breach within 14 days of receiving a written notice from the other party requiring it to do so; or
- (b) A party becomes insolvent or bankrupt, has a liquidator, administrator, receiver or manager appointed to it or any of its assets, enters into a scheme of arrangement (other than for the purposes of a solvent restructuring) or has execution levied against any of its property.
- 14.2 The Contractor may at any time and for any reason terminate these Terms by giving the Customer 14 days' written notice.
- 14.3 To avoid any doubt, if these Terms are terminated, the Customer must pay the Contractor for the Works provided to the Customer up to the date of termination.
- 14.4 The rights of both parties under this clause do not limit or prejudice any of its other rights under these Terms.
- 15. Liability**
- 15.1 To the maximum extent permitted by law, the liability of the Contractor to the Customer arising out of, or in connection with, the Terms and the Works is limited to the net amount of the Contractor's insurance payment in respect to a valid and accepted insurance claim for such liability, pursuant to a policy of insurance effected and maintained by the Contractor (acknowledged to be at the absolute discretion of the Contractor's insurer).
- 15.2 The Contractor shall not be liable for any delay or failure to perform its obligations under these Terms if such failure or delay results directly or indirectly from any cause, event or

matter beyond the reasonable control of the Contractor, including but not limited to:

- (a) Any act, default or omission on the part of the Customer;
- (b) Variations directed by the Customer;
- (c) Unavailability of suitable materials or parts;
- (d) Failure of transportation affecting the Contractor, its supplier or any other person, company or firm;
- (e) Latent conditions;
- (f) Inclement weather;
- (g) Changes in law;
- (h) Directions or delays by municipal, public or statutory authorities;
- (i) Electric power supply failure;
- (j) Damage by fire, explosion, earthquake, lightning, storm, flood, acts of God, civil or military authority, public enemy, war, civil commotion, strikes, labour disputes or industrial conditions; or
- (k) epidemics, pandemics or quarantine restriction and the effect of any measures taken in relation to any of those matters.

15.3 Any advice, recommendation, information, assistance or service given by the Contractor in relation to the Services is given in good faith, and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. The Contractor does not accept any liability or responsibility for any loss or damage suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.

#### **16. Consequential and indirect losses**

16.1 Notwithstanding any other provision of these Terms, the Contractor is in no circumstances (whatever the cause) liable in contract, tort (including without limitation, negligence) or breach of statutory duty or otherwise to compensate the Customer for:

- (a) any increased costs or expenses;
- (b) any loss of profit, revenue, business, contracts or anticipated savings;
- (c) any loss or expense resulting from a claim by a third party; or
- (d) any special, indirect or consequential loss or damage of any nature whatsoever.

16.2 The Customer expressly undertakes not to seek or claim, and waives any entitlement whether under these Terms or at law, to any special, indirect or consequential loss or damage of any nature whatsoever arising out of, or in any way connected with, the subject matter of these Terms or the Works.

#### **17. Indemnity**

17.1 To the maximum extent permitted by law, the Customer is liable for and indemnifies the Contractor in respect of any and all claims, actions, expenses, damages, losses, liabilities, costs, charges, outgoing or payment which the Contractor suffers, incurs or is liable for:

- (a) in respect of the Works, except insofar as such claim arises from the Contractor's negligence or unrectified breach of contract; and
- (b) as a result of, or in respect to, any breach of these Terms, or any wrongful act or omission of the Customer or any persons permitted on the site or premises by the Customer (including but not limited to negligence, misrepresentation, unlawful conduct and wilful misconduct).

#### **18. Insurance**

18.1 The Contractor will hold insurances as required by law for the duration of the Works.

#### **19. Force Majeure**

19.1 The Contractor will have no liability in relation to any loss, damage, cost or expense caused by the Contractor's failure to perform or complete the Works as a result of any circumstances or matters beyond the Contractor's control, such as fire, flood, earthquake, natural disasters, civil disturbance, theft, crime, strike, lockout, breakdown, war, unavailability of materials and goods, and epidemics, pandemics or quarantine restriction and the effect of any measures taken in relation to any of those matters.

#### **20. Dispute Resolution**

20.1 A dispute may be raised by either party in writing to the other party.

20.2 If a dispute is notified, senior representative of both parties are to meet within seven (7) days of the notice to resolve the dispute or agree to a resolution process in good faith.

20.3 If the dispute remains unresolved, then either party may instigate mediation or arbitration by written notice to the other party.

20.4 A party must not commence any action, bring any proceedings or seek any relief or remedy in a court until the parties have complied with this clause (except seeking interlocutory or equitable relief from a court).

20.5 Notwithstanding the existence of a dispute, each party must continue to perform its obligations under these Terms.

#### **21. Notices**

21.1 A notice or other communication to a party must be in writing and delivered to that party in one of the following ways:

- (a) Delivered personally;
- (b) Posted to their address when it will be treated as having been received on the fourth business day after posting;
- (c) Sent by email to the email address (if nominated in the Quote) when it will be treated as received when it enters the recipient's information system.

#### **22. General matters**

22.1 These Terms may only be amended by written agreement between the parties.

22.2 These Terms may be executed in any number of counterparts and all counterparts together make one instrument.

22.3 The parties may only assign, charge or deal with its rights or obligations under these Terms to the extent of the written consent provided by the other party, which will not be unreasonably withheld.

22.4 The contents of these Terms constitute the entire agreement between the Contractor and Customer, and any previous agreements, understandings and negotiations cease to have effect.

22.5 If any of the Terms of this agreement are void, or become voidable by reason of any statute or rule of law, then that term or condition shall be severed from these Terms without affecting the enforceability of the remaining Terms.

22.6 No failure, delay, relaxation or indulgence by a party in exercising any power or right conferred upon it under these Terms will operate as a waiver of that power or right. No single or partial exercise of any power or right precludes any other or future exercise of it, or the exercise of any other power or right under these Terms.

22.7 Clauses 12, 14, 15 and 17 survive termination of the Terms. Any clauses in these Terms which impliedly continue, or by their nature are intended to continue, after the Terms are terminated will survive the termination of these Terms.

22.8 These Terms are governed by the laws of South Australia.