

Exposed Aggregate – Terms & Conditions of Trade

- Definitions**
 - "Contractor" means Justin Green ATF Green Family Trust T/A Perth Exposed Aggregate, its successors and assigns or any person acting on behalf of and with the authority of Justin Green ATF Green Family Trust T/A Perth Exposed Aggregate.
 - "Client" means the person's ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each jointly and severally.
 - "Works" means all Works or Materials supplied by the Contractor to the Client at the Client's request and the Client acknowledges that they shall be liable for the payment of the Price as if they were interchangeable for the other.
 - "Price" means the Price payable for the Works as agreed between the Contractor and the Client in accordance with clause 4 below.
 - Acceptance**
 - 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.
 - These terms and conditions may only be amended with the Contractor's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Contractor.
 - The Contractor shall only be responsible for their performance to the party that contracts them to undertake the Works and shall not be responsible to any third party irrespective of their relationship to the Client or the Contractor.
 - Where the Client requesting or organising the Contractor to provide Works is acting with or on behalf of any third party and that third party is intended to be responsible for the payment (or any part thereof) of the Price then in the event that the third party does not pay for the Works within due, the Client acknowledges that they shall be liable for the payment of the Price as if they had contracted the Services on their own behalf.
 - Change in Control**
 - The Client shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax numbers, 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.
 - Price and Payment**
 - At the Contractor's sole discretion the Price shall be either:
 - as indicated on invoices provided by the Contractor to the Client in respect of Works performed or Materials supplied; or
 - the Contractor's quoted Price (subject to clause 4.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.
 - The Contractor reserves the right to change the Price:
 - if a variation to the Materials which are to be supplied is requested; or
 - if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including but not limited to, need for remediation in accessing the site, availability of machinery, safety considerations, stair work, additional ground preparation (including the removal of more than 1m3 of sand), pre-existing defects or defects caused by third parties (other trades, insects, debris, etc), change of design, prerequisite work by any third party not being completed, change of design, iron reinforcing rods in concrete, or hidden pipes and wiring etc) which are only discovered on commencement of the Works; or
 - in the event of increases to the Contractor in the cost of labour or materials which are beyond the Contractor's control.
 - At the Contractor's sole discretion a non-refundable deposit of fifty percent (50%) may be required. The deposit amount due will be stipulated at the time of the order of the Materials/ Works and shall become immediately due and payable.
 - Time for payment for the Works being of the essence, the Price will be payable by the Client on the dates determined by the Contractor, which may be:
 - on completion of the Works; or
 - before completion of the Works; or
 - the date specified on any invoice or other form as being the date for payment; or
 - 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.
 - Payment may be made by cheque, electronic on-line banking, credit card (plus a surcharge of up to two and half percent (2.5%) of the Price), or by any other method as agreed to between the Client and the Contractor.
 - 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 under this or any other agreement or contract. The Client must pay GST, without deduction of 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.
 - Delivery of the Works**
 - Subject to clause 5.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonable to expect.
 - 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 delays 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:
 - make a selection;
 - have the site ready for the Works; or
 - notify the Contractor that the site is ready.
 - At the Contractor's sole discretion the cost of delivery is either included in the Price or is in addition to the Price as stated on the invoice.
 - The Contractor may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
 - 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 Client shall make every endeavour to enable the Contractor to deliver the Works to be supplied at the time and place as was arranged between both parties. In the event that the Contractor is unable to supply the Works as agreed solely due to any action or inaction of the Client then the Contractor shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date.
 - Risk**
 - If the Contractor retains ownership of the Materials under clause 12 then:
 - where the Contractor is supplying Materials only, 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 immediately at the time that the Materials are delivered by the Contractor or the Contractor's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the delivery address); and
 - 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 13.2 completion of the Works all risk for the Works shall immediately pass to the Client.
 - Notwithstanding the provisions of clause 6.1 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 if such 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.
 - The Contractor recommends the covering or removal of items in the direct workspace area including but not limited to downpipes, drainage outlets, windowsills, windows, walls and air conditioning units to allow for a better finish and to eliminate the risk of damage during the Works. The Contractor will make every effort to protect and minimize damage to the surrounding area, however, the Contractor does not accept any responsibility for cleaning or repair costs attributed to damage caused by the Client failing take precautions.
 - The Contractor may at its discretion notify the Client that it requires to store at the worksite materials, fittings and appliances, or plant and tools required for the Works, in which event the Client shall supply the Contractor a safe area for storage and shall take all reasonable efforts to protect all items stored from destruction, theft or damage. In the event that any such items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Client's responsibility.
 - The Client accepts and acknowledges that the Contractor accepts no responsibility for any loss or damage to the Works and/or the Client's property whose damage is due to rain, storm, flood or other natural disasters.
 - Concrete Risk**
 - The Client acknowledges that variations of colour and texture are inherent in concrete. The Contractor shall not be liable for any loss, damages or costs however arising resulting from any variation of the colour or texture between existing substrate, the different areas treated and/or batches supplied.
 - The Contractor is not responsible for and has no control over contaminants through to the sealing stage that may cause discolouration. The Contractor cannot guarantee that stains within the concrete will be removed by the re-cleaning process.
 - Whilst the Contractor will take all due care to avoid contamination of the finished surface, the Contractor accepts no responsibility for contamination by other trades people or natural contaminants such as dust, insects or fibres which may be present at the worksite.
 - The Contractor shall not be liable for any loss or damage to the Works if the Client does not follow the Contractor's recommendation to allow no foot traffic on the concrete for a minimum of twenty four (24) hours and/or any vehicles on the concrete for a minimum of twenty eight (28) days after completion of the Works. The Contractor will advise if covering of the Works is required while curing.
 - The Contractor gives no guarantee (expressed or implied) as to the length of time the curing process will take, and/or against:
 - damage caused by contact with chemicals, solvents, oils or any other substances; or
 - small stone chips that may appear when cutting the concrete; or
 - the effects by elements such as heat exposure or wet weather conditions that prolong the curing process.
 - The Client accepts and acknowledges that the Contractor offers no guarantee against the cracking of concrete or the appearance of small holes in the concrete as a result of the polishing process.
 - At the completion of the Works the Client or the representative of the Client shall be in attendance and the Works shall then be duly measured. In the absence of either the Client or their representative the Contractor shall carry out the necessary measurements and forward to the Client their calculations. If the Client does not object to the calculations within seven (7) days of receipt of the same then it shall be deemed acceptance of the same and the Works completed.
 - Where the Contractor gives advice or recommendations to the Client, or the Client's agent, with specific instructions regarding the use of the Materials and such advice or recommendations are not acted upon then the Contractor shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
 - Access**
 - The Client shall ensure that the Contractor has clear and free access to the work site at all times to enable them to undertake the Works. The Contractor shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of the Contractor.
 - Underground Locations**
 - Prior to the Contractor commencing any work the Client must advise the Contractor of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, power mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
 - Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 9.1.
 - Accuracy of Client's Plans and Measurements**
 - In making the Client gives the Contractor for 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 inaccurate plans, specifications or other information.
 - The Contractor is not responsible for the accuracy of any measurements and quantities of the Materials required to complete the Works. It is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or the Contractor places an order based on these measurements and quantities. The Contractor accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.
 - Client's Responsibilities**
 - It is the Client's responsibility to:
 - make payment to the Contractor on the agreed date and time, providing suitable power and water supply onsite, and all areas clean and clear to enable the scheduled Works to be completed in accordance with the schedule of installation. The Contractor shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, kerbing, driveways and concrete or paved or grassed areas) unless due to the negligence of the Contractor, and if the Works are interrupted or delayed by the failure of the Client to adhere to their responsibilities under this agreement, any additional costs will be invoiced to the Client as an extra; and
 - acknowledge that if a bobcat or pump truck is required on-site the Client agrees to the Contractor providing such a source. Charges will apply as per clause 4.2; and
 - remove all fragile items including but not limited to, pot plants, furniture and ornaments. Breakages and damages are the responsibility of the Client. All care taken but no responsibility accepted by the Contractor in this regard;
 - remove, cover, or otherwise protect (prior to the commencement of the Works) any of the Client's property which is in the vicinity of the Works. The Client agrees that the Contractor shall not be liable for any damage to the property caused by the Client's failure to comply with this clause; and
 - supply an area suitable for washing out the Contractor's equipment and for depositing all unsorted concrete and slurry.
 - The Contractor is not insured to remove furniture or fittings and will not do so, nor is the Contractor licensed to move gas or electrical appliances.
 - Title**
 - The Contractor and the Client agree that ownership of the Materials shall not pass until:
 - the Client has paid the Contractor all amounts owing to the Contractor; and
 - the Client has met all of its other obligations to the Contractor.
 - Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
 - It is further agreed that:
 - until ownership of the Materials passes to the Client in accordance with clause 12.1 that 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;
 - the Client holds the benefit of the Client's insurance of the Materials on trust for the Contractor and will direct to the Contractor the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
 - the production of these terms and conditions by the Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor to make further enquiries;
 - 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 Client on such sales;
 - the Client shall 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 it directed to the Contractor;
 - until the Materials have become fixtures the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials;
 - the Contractor may recover possession of any Materials in transit whether or not delivery has occurred;
 - the Client shall not charge or grant an encumbrance over the Materials nor grant otherwise give away any interest in the Materials while they remain the property of the Contractor;
 - 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.
 - Personal Property Securities Act 2009 ("PPSA")**
 - In this clause the terms "financing change statement", "security agreement", and "security interest" have the meaning given to it by the PPSA.
 - Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials that have previously been supplied and that will be supplied in the future by the Contractor to the Client.
 - The Client undertakes to:
 - 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 register a financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA or (iii) correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);
 - register a financing change statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;
 - not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;
 - not register or attempt to register, a financing statement or a financing change statement in relation to the Materials in favour of a third party without the prior written consent of the Contractor; and
 - 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.
 - 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.
 - The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(c) and 132(4) of the PPSA.
 - The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
 - 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.
 - The Client shall unconditionally provide any actions taken by the Contractor under clauses 13.3 to 13.5.
 - Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
 - Security and Charge**
 - 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, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any moneys).
 - 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.
 - The Client irrevocably appoints the Contractor and 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 14 including, but not limited to, signing any document on the Client's behalf.
 - Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
 - The Client must inspect all Materials on delivery (or the Works on completion) and must within twenty four (24) hours 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/damage to the Materials/Works as soon as reasonably possible after such defect becomes evident. Upon such notification the Client must allow the Contractor to inspect the Materials or to review the Works provided.
 - 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).
 - The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
 - Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
 - If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of the CCA.
 - 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. If the Contractor is required to rectify, re-supply, 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.
 - 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:
 - limited to the value of any express warranty or warranty card provided to the Client by the Contractor at the Contractor's sole discretion;
 - limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Materials;
 - otherwise negated absolutely.
 - Subject to this clause 15, returns will only be accepted provided that:
 - the Client has complied with the provisions of clause 15.1; and
 - the Contractor has agreed that the Materials are defective; and
 - the Materials are returned within a reasonable time at the Client's cost (if that cost is not exempt) and
 - the Materials are returned in as close a condition to that in which they were delivered as is possible.
 - Notwithstanding clauses 15.1 to 15.9 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:
 - the Client failing to properly maintain or use any Materials;
 - the Client using the Materials for any purpose other than that for which they were designed;
 - the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - interference with the Works by the Client or any third party without the Contractor's prior approval;
 - the Client failing to follow any instructions or guidelines provided by the Contractor; or
 - fire war and tear, accident, act of God.
 - 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.
- Default and Consequences of Default**
 - 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 a rate) after as well as before any judgment.
 - If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's contract default fee, and bank dishonour fees).
 - Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Works to the Client. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.
 - Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to accept a return from the Client if the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
 - any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
 - 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
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- Cancellation**
 - 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. In the event that the Contractor cancels the contract the Client shall be liable for any and all amounts owing to the Contractor (whether direct or indirect) by the Contractor as a direct result of the cancellation (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.
- Compliance with Laws**
 - The Client or any person ordering the Works shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
 - The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the works.
 - The Client agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- Privacy Act 1988**
 - The Client agrees for the Contractor to obtain from a credit reporting body (CRB) a credit report in relation to the personal credit information (e.g. name, address, D.O.B., occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Contractor.
 - The Client agrees that the Contractor may exchange information about the Client with those credit reporting bodies for the following purposes:
 - to assess an application by the Client; and/or
 - to notify other credit providers of a default by the Client; and/or
 - 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
 - to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
 - The Client consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit.
 - 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 Materials; and/or
 - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Materials; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client;
 - enabling the collection of amounts outstanding in relation to the Materials.
 - The Contractor may give information about the Client to a CRB for the following purposes:
 - to obtain a consumer credit report;
 - allow the CRB to create or maintain a credit information file about the Client including credit history.
 - The information given to the CRB may include:
 - personal information as outlined in 19.1 above;
 - name of the credit provider and that the Contractor is a current credit provider to the Client;
 - whether the credit provider is a licensee;
 - type of consumer credit;
 - 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);
 - in advice consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice of 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 by or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - information that, in the opinion of the Contractor, the Client has committed a serious credit infringement;
 - advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
 - The Client shall have the right to request (by e-mail) from the Contractor:
 - a copy of the information that the Client retains about the Contractor and the right to request that the Contractor correct any incorrect information;
 - that the Contractor does not disclose any personal information about the Client for the purpose of direct marketing;
 - The Contractor will destroy personal information upon the Client's request (by e-mail) or if it is no longer required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
 - 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 other steps to resolve 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 www.oaic.gov.au.
- Construction Contracts Act 2004**
 - At the Contractor's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Construction Contracts Act 2004 may apply.
 - Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act that is applicable.
- General**
 - The failure by the Contractor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Contractor's right to subsequently

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- enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2. These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia in which the Contractor has its principal place of business, and are subject to the jurisdiction of the courts in Western Australia.
- 21.3. Subject to clause 15 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).
- 21.4. The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 21.5. The Contractor may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 21.6. The Client agrees that the Contractor may amend these terms and conditions at any time. If the Contractor makes a change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Contractor to provide any Works to the Client.
- 21.7. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 21.8. The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.