



MINOR CONTRACTS – CONDITIONS OF SALE (TERMS & CONDITIONS)

1. GENERAL

In these terms and conditions unless the contrary intention is expressed the term "Contractor" shall mean the company that is selling the goods and/ or services on the face hereof and the term "Client" shall mean that person partnership or body (however constituted) which is purchasing the goods and/or services described. The term "this Contract" shall mean these terms and conditions of sale and any variation hereto agreed to in writing by the parties hereto.

2. WORKS

For the Contract Sum written on the face hereof, the Contractor shall carry out the Works described on the face hereof.

3. PRICE

The price quoted is based on the cost of labour, material, transport and of conforming to statutory obligations ruling at this date of this Agreement and if between this date and the date of completion the work variations should occur in this cost then the price to be paid will be amended to provide for these variations in these costs.

4. TERMS OF PAYMENT

Payment shall be made within (7) seven days from date of invoice for goods delivered or work completed. Interest shall accrue at the rate of 2% per month and shall be payable by the Client to the Contractor for payment made (7) seven days after date of invoice.

GST tax is included in the price quoted.

5. DELAY

(a) If the Contractor is delayed in the carrying out of the works by the Client or any agent or other contractor of the Client then the Contractor shall be entitled to be reimbursed for all losses sustained by the Contractor occurring out of such delays and shall also be entitled to receive a fair extension of time for the completion of the work.

(b) The Contractor shall not be responsible for non-performance or delays in performance occasioned by any causes beyond the Contractor's reasonable control including but not limited to acts of God, war, fire, machinery breakdown, inclement weather, strikes, lock out, governmental actions and material shortages and any other unexpected or exceptional cause.

Any delays so occasioned shall affect a corresponding extension of the Contractor's performance dates which are in any event understood to be appropriate. In no such event shall the Client be entitled to damages of any kind (whether general special or otherwise) for late performance or a failure to perform. Notwithstanding the foregoing any goods available for delivery by the Contractor shall be accepted and paid for by the Client at the stated price (as the same may be varied hereunder) and no such delay shall relieve the Client from the obligation to pay for any goods delivered or the Client's obligation to accept delivery and pay for any of the goods tendered by the Contractor after the operation of the cause preventing delivery has ceased.

6. VARIATIONS

(a) The Contractor shall vary the Works only on the instruction of the Client.

(b) The value as agreed by the Parties of any variation shall be added to or deducted from the Contract Sum as the case may be. The Contractor shall not be obliged to proceed with the carrying out of any variation until the price of such variation is agreed between the Parties.

7. SERVICES and FACILITIES

The Client shall provide the Contractor with the following services free of all charges*.

(a) Electricity for lighting and power, reasonably adjacent to the Works. The Contractor to provide his own electric leads and connections.

(b) Water.

(c) Toilet and washing facilities.

(d) Hoisting and craneage.

*The Parties must strike out or amend any of these services as applicable. All amendments must be initialled between the Parties.

8. LIABILITY

(a) The provisions of this Contract must be read having regard to provisions in certain legislation which may have the effect of giving the Client certain rights against the Contractor which cannot be excluded restricted or modified by agreement between the Client and the Contractor. Nothing in this Contract shall have the effect of excluding restricting or modifying such rights except to the extent to which they can lawfully be so excluded, restricted or modified and to the extent to which any provision of this Contract purports to do otherwise it shall be of no effect.

(b) The Contractor shall indemnify the Client against any claim in respect of personal injury to, or the death of any person in the employment of the Contractor arising out of, or in the course of, or caused by the carrying out of the works provided that such claim does not arise from the fault negligence or actionable wrong of the Client, his servants or agents or his other contractors.

(c) For the purpose of clauses 8(b), 8(d), 8(e) and 8(f) hereof, "loss or damage" shall include all types of loss or damage including injury or death to any person and without limiting in any way the generality of the foregoing shall include loss of profits business revenue goodwill and anticipated savings and special indirect and consequential loss whether or not consequential upon physical damage to property wheresoever situate or injury or death to any person wheresoever situate.

(d) The Contractor shall be under no liability to the Client in contract or tort or pursuant to the provisions of any statute rule or regulation or otherwise, howsoever for any loss or damage arising directly or indirectly out of or in connection with the performance (which includes non performance or defective performance) of this Contract or any part thereof or of any act or omission (which includes any negligent act or omission) in connection therewith on the part of the Contractor or those for whose acts or omissions the Contractor is responsible in excess of amount equal to twenty per cent (20%) of the sum of the total prices stated on the face of this form (hereinafter called "the maximum liability sum") which sum shall constitute a maximum total limit on the said liability of the Contractor whether or not there are successive and concurrent claims or whether or not such claims result from or arise out of substantially the same circumstances provided that:

(1) The maximum liability sum shall be and be deemed to be reduced by the amount if any which the Contractor has paid or has been adjudged liable to pay to any third parties in respect of any claim or demand by any third part of the kind described in Clause 8(e) hereof:
(2) this Clause 8(d) shall in no way exclude restrict or modify the provisions of Clause hereof.

(e) The Client hereby indemnifies the Contractor and shall keep the Contractor indemnified at all times hereafter from and against all loss or damage costs and expenses arising from any claims or demands made against the Contractor by any third party respect of any loss or damage arising directly or indirectly out of or in connection with the performance (which includes non-performance or defective performance) of this Contract or any part thereof or of any act or omission (which includes any negligent act or omission) in connection therewith on the part of the Contractor or those for whose acts or

omissions the Contractor is responsible and whether any such claims or demands arise pursuant to the general law or statute rule or regulation or otherwise howsoever provided that the Client shall not be required to indemnify the Contractor as abovementioned unless and until the total of all such loss or damage costs and expenses arising from such claims or demands of third parties as aforesaid when added to the amount if any of any liability or liabilities of the Contractor to the Client are in excess of the maximum liability sum.

(f) In any condition warranty or obligation is implied in this Contract or imposed on the Contractor by virtue of the provisions of Division 2 or 2A of Part V of the Trade Practices Act 1975 as amended or any other applicable statute rule or regulation then to the extent to which liability of the Contractor in respect of breach by the Contractor of any such condition warranty or obligation cannot be or is not otherwise excluded restricted or modified by this Contract and to the extent to which the amount of such liability sum then the liability of the Contractor in respect of any such breach shall so far as permissible by law be limited to the following:

(1) In the case of supply (including Lease or hire) by the Contractor of goods to any one or more of the following as the Contractor in its discretion may decide:

- 1.1 The replacement of the goods or the supply of equivalent goods;
- 1.2 The repair of the goods;
- 1.3 The payment of the cost of replacing the goods or of acquiring equivalent goods; or
- 1.4 The payment of the cost of having the goods repaired.

(2) In the case of supply by the Contractor of services to either of the following as the Contractor in its discretion may decide.

- 2.1 the supplying of the services again;
- 2.2 the payment of the cost of having the services supplied again.

The Client acknowledges that the abovementioned limitations on liability in respect of any such breach of any such condition warranty or obligation are fair and reasonable.

(3) The Contractor shall ensure all communication cables or critical power equipment are checked for transmission and receiving of signals, any environmental conditions whether it be internal or external which influences the correct operation of the equipment and involves the Contractor in additional costs will be treated as an extra to the Contract Price.

(4) The Contractor when involved in trench digging or boring under roadways, etc, will base the Contract Price on normal base material having been used by the customer, any deviation from this involving the Contractor in additional costs will be charged as an extra to the Customer.

(5) Where no drawing is supplied, showing cable layouts, all care but no responsibility will be taken in the drilling of concrete decks, partition walls, etc. All care will be taken to ensure no damage is caused to encased electrical and/or any type of communication cabling.

No responsibility will be accepted for any damage to property or any cost incurred in restoration time involved.

9. BASIS OF QUOTATION

(a) Allowance has been made for all work to be carried out during normal working hours, i.e. from 6:00 am to 6:00 pm Monday to Friday, excluding Public Holidays. Should it be found that circumstances require the work to be carried out outside these nominated hours, additional costs will be incurred by the Contractor and these costs will be payable by the Client.

10. TERMINATION

If the Client makes default in payment within the time (specified by the Contractor) or otherwise fails to carry out the terms of or repudiates this or any other Contract with the Contractor or if the Client becomes insolvent or commits any act of bankruptcy stops payments of its debts or calls a meeting of or enters into composition with or for the benefit of its creditors or being a company has a receiver, official manager or provisional liquidator appointed of its undertaking or assets or any part thereof or winding up petition is presented against the Client or the Client goes into liquidation (except for the purpose of reconstruction or amalgamation the Contractor may at its option and notwithstanding its waiver of any such default or failure without prejudice to its other rights under this Contract or otherwise forthwith suspend or terminate this Contract or any unfulfilled part thereof or make partial deliveries

or require payment in cash before or on delivery of goods or performance of services notwithstanding the terms of payment specified.

10a. CANCELLATION OF ORDERS

Orders received and accepted by the Seller shall not be subject to cancellation either wholly or partially without the Seller's consent in writing. If such consent is given the seller shall be entitled to make as a condition of such consent a cancellation charge when it is in the opinion of the Seller fair, reasonable or necessary to do so.

11. ASSIGNMENT

(a) The Contractor reserves the right to sub-contract with any other person (whether associated or otherwise with the Contractor) for the performance of any part of this Contract.

(b) The Client hereby undertakes that it will not assign transfer charge or in any manner make over or purport to assign transfer charge or make over this Contract or its rights hereunder or any part thereof without the consent in writing of the Contractor.

12. WARRANTY

(a) Where the Contractor is required to install goods and equipment, the client warrants that the structure of the premises or equipment in or upon which these goods or equipment are to be installed or erected, is sound and will sustain the installation and work incidental thereto, and the Contractor shall not be liable for any loss or damage resulting from insufficient or defective foundations, walls or other structures not erected by the Contractor.

13. ACKNOWLEDGEMENT

The Client acknowledges that it is his responsibility to ensure that all approvals have been obtained and all relevant parties notified is subject to the carrying out of the works. The Contractor shall not be liable for any loss or damage caused by the failure of the Client to obtain approval for the carrying out of the works, or failure to notify a relevant party.

14. AGREEMENT BINDING

This Contract shall accrue to the benefit of and be binding upon the Parties and upon their assigns and successors.

15. SEVERANCE

Each paragraph and provision of this Contract shall be severable from each other and if for any reason any paragraph or provision is invalid or unenforceable such invalidity or enforceability shall not prejudice or in any way affect the validity or enforceability of any other paragraph or provision. This contract and each paragraph and provision hereof shall be read and construed so as to give thereto the full effect thereof subject only to any contrary provision of the law to the intent that where this Contract or any paragraph or provision hereof would but for the provisions of this paragraph have been read and construed as being void or ineffective it shall nevertheless be a valid contract paragraph or provision as the case may be to the full extent to which it is not contrary to any provision of the law.

16. NOTICES

All notices to or upon any of the parties hereto shall be in writing addressed to any of the parties at the address specified on the face of this Contract (or at such other address as any of the parties hereto may hereafter specify to all the other parties hereto) and once given or made shall be irrevocable

And shall be deemed to have been duly given notice or made:

- (a) In the case of a communication by letter or by cable when received; and
- (b) In the case of a communication by telex when sent.

17. GOVERNING LAW

These Terms and Conditions of sale including the sales contract evidenced thereby shall in all aspects be governed by and constructed in accordance with the laws of the State of New South Wales Australia. And the buyer hereby submits to the exclusive jurisdiction of the courts of the State of New South Wales Australia. Any legal or arbitration proceeding in relation thereto or any dispute arising here from shall be commenced, heard and otherwise take place in courts nominated by the contractor in the State of New South Wales Australia and none other.