

INSURAPLEX PTY LTD

(ABN 44 620 846 344)

## TRADING TERMS

Effective: FEB 2022

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The following Trading Terms supersede all previous terms and conditions issued by Us.

### 1. Interpretation

In these Trading Terms and in any Authority To Proceed, Statement of Satisfaction, Form of Release, quotation, offer, current catalogue, website, price list produced by Us or other document or agreement with Us, the following definitions apply:

**"Act"** means the *Domestic Building Contracts Act 1995* (Vic).

**"Authority To Proceed"** means an authority attached to a Scope of Works, authorising Us to proceed in respect of such Scope of Works.

**"Form of Release"** means any form of release given by You to Your Insurer granting Your Insurer authority to make payment for Works directly to Us.

**"Goods"** means any goods supplied by Us to You (and, where the context so permits, shall include a supply of Services) as described in any Scope of Works, quotation, offer, current catalogue, website or price list produced by Us.

**"GST"** means the goods and services tax that applies in accordance with *A New Tax System (Goods & Services) Act 1999* (Cth).

**"Guarantor"** means the guarantor(s) described in the Authority To Proceed, subject to acceptance by Us.

**"Insurer"** means Your insurer who has directed and/or authorised Us to complete Works on or in respect of the Property.

**"Make Safe Works"** means any building works performed by Us at the Insurer's direction and which are intended to reduce immediate danger on a Property.

**"Payments Schedule"** means a payments schedule set out in the relevant Scope of Works, which may consist of a single payment or various progress payments followed by a final payment, and includes any payments schedule agreed in respect of any Variation Works.

**"Prices"** means the prices attributable to the Works and/or Goods and/or Services as specified by Us in any Scope of Works, quotation, offer, current catalogue, website or price list produced by Us.

**"Prime Cost"** means the estimated cost of an item (e.g. a fixture or a fitting) which, when the Authority to Proceed was signed by You, either had not been selected by You in connection with the Scope of Works or its price was not known yet.

**"Property"** means the property on which Works are to be completed, as specified in the Scope of Works.

**"Provisional Sum"** means the estimated cost of carrying out a part or parts of the Scope of Works for which We, after making all reasonable enquiries, were unable to provide You with a firm quote prior to You signing the Authority To Proceed.

**"Scope of Works"** means any proposal from Us setting out building works to be performed for You, which may be in the form of a firm quote or, where the Scope of Works will include any Prime Cost or Provisional Sum, in the form of a 'Managed Cost Plus' proposal.

**"Services"** means all services supplied by Us to You and includes any advice or recommendations (and, where the context so permits, shall include the completion of any Scope of Works).

**"Statement of Satisfaction"** means a statement issued by Us in respect of a Scope of Works, or a stage of a Scope of Works, setting out the Works performed and any Works outstanding (including rectification of defects), which is to be signed by You if accepted and agreed.

**"Trading Terms"** means these terms and conditions of trade and includes any amendment or variation.

**"We"** and **"Us"** means INSURAPLEX PTY LTD (ABN 44 620 846 344) and includes any of Our Related Bodies Corporate (as defined in the *Corporations Act 2001* (Cth)) which performs any Works and/or supplies Goods and/or Services to You (whether or not the fact is disclosed to You) and **"Our"** means belonging or pertaining to Us.



"**Variation**" has the meaning given to this term in clause 4(h).

"**Variation Works**" means any Works performed by Us in respect of a Variation.

"**Works**" means any building works We have agreed to perform for You on the relevant Property, as set out in the agreed Scope of Works, and any other building works in respect of the Property as may be separately agreed by Us with You in writing.

"**You**" means the person, firm, company or entity providing a signed Authority To Proceed to Us and "**Your**" means belonging or pertaining to You.

## 2. Application of Trading Terms

- (a) These Trading Terms apply to every Scope of Works and/or sale of Goods and/or supply of Services by Us to You. Each Authority To Proceed submitted by You and accepted by Us will be an individual contract for the relevant Scope of Works and/or the relevant Goods and/or Services in accordance with these Trading Terms.
- (b) Subject to any special trading terms agreed to between You and Us and recorded in the relevant Scope of Works or otherwise separately in writing, these Trading Terms (together with any Authority To Proceed, Statement of Satisfaction, Form of Release, quotation, offer, current catalogue, or price list produced by Us) shall comprise in entirety Our terms and conditions of trade.
- (c) In the event of any inconsistency between these Trading Terms and any other document, these Trading Terms shall prevail and any trading terms nominated by You are expressly excluded. Any warranty, representation or guarantee not included or provided for in these Trading Terms is of no effect.
- (d) If any part of these Trading Terms, or the application of these Trading Terms to any person or circumstance, is or becomes invalid or unenforceable, the remaining provisions of these Trading Terms are not affected and are valid and enforceable to the fullest extent permitted by law.
- (e) We may amend these Trading Terms from time to time and We may give notice of any amended Trading Terms by publication on our website or by some other means of notification to You. You will be deemed to have had knowledge of such amendments and have accepted these Trading Terms as amended if You continue to accept any further Scope of Works or purchase any further Goods and/or Services from Us after such amendment. Each subsequent Scope of Works and/or supply of Goods and/or Services by Us to You will be in accordance with these Trading Terms as amended.

## 3. Agreement

- (a) Subject to (b) and (c) of this clause, Your acceptance of these Trading Terms and a Scope of Works shall be deemed to occur upon You signing the relevant Authority To Proceed. It shall be in Our absolute discretion as to whether We proceed with the Scope of Works.
- (b) You are entitled to cancel a Scope of Works within 5 clear business days of signing the corresponding Authority To Proceed by providing written notice to us in accordance with section 34 of the Act. You acknowledge that the 5 business day period commenced upon You signing the Authority To Proceed.
- (c) Any Scope of Works produced by Us is subject to review, amendment or withdrawal by Us at any time prior to acceptance by You.
- (d) Any Authority To Proceed which has been accepted by Us may not be cancelled by You without Our written consent (which We may withhold in Our absolute discretion) and then only on the basis that You will indemnify Us in full against all loss (including loss of profit), costs (including the cost of labour and materials used), damages, charges and expenses (including legal costs on a full indemnity basis) incurred by Us as a result of such cancellation.
- (e) You are solely responsible for determining whether the Scope of Works and/or Goods and/or Services are suitable for Your intended purposes and meet Your requirements and You acknowledge that no oral or written information, representation or advice given by Us (other than as contained in these Trading Terms) creates a warranty from Us or in any way increases the scope of these Trading Terms.
- (f) You agree to notify Us in writing of any change in the ownership or control of Your business structure (if applicable) not less than 7 days prior to such change taking effect and You indemnify Us against any loss or damage We may incur as a result of Your failure to provide such notification.
- (g) You acknowledge that where the Scope of Works and/or Goods and/or Services include any arrangement for Us to source, on Your behalf, expressions of interest or any other form of tender from third parties in respect of any building works and/or services required by You, You must not deal directly with any such third parties recommended to You by Us in respect of the same such building works and/or services without Our express prior written consent and You indemnify Us against any loss or damage We may incur as a result of Your failure to comply with this obligation. Note that this includes quotations we may have sourced from sub contractors in good faith before any documents may have been signed.

## 4. Works

- (a) By signing the Authority To Proceed, You agree that We may complete the Works instructed to us by You or the Insurer (whichever is applicable). The Works shall be subject to all necessary preconditions, limits and exclusions as set out in the Scope of Works and/or these Trading Terms.
- (b) You agree to grant Us a continuing licence to access the Property for all purposes in connection with Our performance of the Works in accordance with these Trading Terms. You further agree to provide Us, at Your cost, with the use of all assets located at the Property including, but not limited to, electricity, water, gas and internet (as applicable). Unless specifically included in the Scope of Works or otherwise agreed by Us in writing, the removal of all waste and hazardous material in connection with the Works from the Property is Your responsibility.
- (c) We will commence and complete the Works within a reasonable time from the date of Your acceptance of the Scope of Work, having regard to the nature of the building work to be performed and subject to Our agreement to any additional instructions and specifications provided by Your or the Insurer, any necessary permits being obtained by Us, any preconditions in respect of the Scope of Works being satisfied and the availability of Our employees and contractors. We will provide You with at least 2 days' notice before commencing the Works.



- (d) We will not be liable for any failure to perform, or delay in performance of, any obligation where such failure or delay is due to anything beyond Our reasonable control including, but not limited to, pandemic, adverse weather or terrain, strikes, lockouts and other industrial action, material shortages, failure of any of Our suppliers to supply, accidents, power or data transmission failure, breakdowns of plant or machinery, war, changes of government, import or export regulations or embargoes, variations to the Works requested by You, the existence of hazardous materials at or around the Property or any other building issues discovered at the Property once Works have commenced, the requirements of the Insurer or the requirements of any government or regulatory authorities.
- (e) If We are prevented from completing the Scope of Works due to any cause which is beyond Our reasonable control, including the causes specified in (d) of this clause, You remain liable to pay for all Works performed, Goods supplied and expenses incurred by Us up to the date of the Scope of Works being cancelled or suspended.
- (f) Subject to (g) of this clause, the Works cannot not be varied without Our express prior written agreement and, where applicable, the prior written agreement of the Insurer who has instructed Us to complete the Works.
- (g) If, during the course of Our completing the Works, We are unable to use building materials which are an exact match for either the building materials specified in the Scope of Works or the building materials already present at the Property due to a lack of availability of such building materials, We may use standard and readily available building materials which in Our determination closely match the building materials already present at the Property. You acknowledge that We may make such determination in Our absolute discretion and You release Us from any liability associated with such determination.
- (h) If, during the course of Our completing the Works, We discover additional damage and/or issues with the Property which were not previously addressed in the Scope of Works, We may suspend any further Works until You have obtained the Insurer's written consent to a variation of the Scope of Works ("**Variation**") to address such damage and/or issues or until You agree, by a separate written agreement with Us, to a Variation with Our costs in respect of such Variation to borne by You. Where You enter into such an agreement with Us in respect of Variation Works, We may, in Our absolute discretion, require You to pay a deposit before commencing such Variation Works.
- (i) If We complete Make Safe Works on a Property, You agree that such works are temporary in nature and upon completion of the Scope of Works, it is Your responsibility to liaise with the Insurer regarding the issues addressed by the Make Safe Works. You hereby release Us from any liability associated with Make Safe Works completed by Us.
- (j) We will not be responsible for the care of, or any costs or expenses in respect of, any equipment or structures erected or kept on the Property by third parties at the direction of You or Your Insurer.
- (k) At practical completion of each stage of the Works described in the Scope of Works or at practical completion of the Scope of Works (whichever is applicable, depending upon the requirements of the Payments Schedule and the other provisions of the Scope of Works), We will issue You with a corresponding Statement of Satisfaction for your signature and issue Our corresponding invoice to You or, if You have given Your Insurer a Form of Release, to Your Insurer.
- (l) Any claim by You in respect of any stage of the Works performed by Us must be notified to Us in writing within 30 days of Us providing You with a Statement of Satisfaction for the relevant stage of the Works.

## 5. Documents

Any clerical or typing errors, misprints or other similar errors in any document produced by Us in respect of the Scope of Works and/or Goods and/or Services are subject to correction by Us by either amending or re-issuing the affected document (as the case requires). We shall not be liable for any cost, expense or damage incurred by You as a result of any correction of any document produced by Us.

## 6. Intellectual Property

You acknowledge and agree that:

- (a) any intellectual property rights in respect of the Works and/or Goods and/or Services (including, but not limited to, rights to design, copyright, patents or trademarks in respect of all drawings, designs, specifications and other information provided by Us in connection with any Scope of Works, quotation, offer, current catalogue, website, price list produced by Us) remain Our sole and exclusive property and must remain confidential and You will not attempt to claim any such intellectual property rights in respect of any Scope of Works, and/or Goods and/or Services or any modification or improvement of any Scope of Works, and/or Goods and/or Services;
- (b) You must not attempt to modify or reverse engineer any Scope of Works and/or Goods and/or Services; and
- (c) in all cases where You have provided any design for any Scope of Works and/or Goods and/or Services, We will not accept any responsibility for any infringement of any design, copyright, patents or trademarks or other intellectual property in connection with the performance of the corresponding Works and You agree to indemnify Us against claims by any third party for infringement or unauthorised use of such intellectual property arising out of the performance of the corresponding Works or the manufacture or use of such Goods and/or Services.

## 7. Prices and Charges

- (a) All Prices and all amounts payable to Us are exclusive of GST or any other applicable government tax or duty, unless otherwise indicated. Subject to (b) of this clause, You must pay all such taxes and duties in connection with those amounts.
- (b) If the Works performed by Us are in respect of an insurance claim by You and Your Insurer will not pay the GST component of any invoice issued by Us, We will provide You with a copy of the relevant invoice and the GST component of the relevant invoice will be payable by You in accordance with clause 8.





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- (c) If a Scope of Works includes any Prime Cost and/or any Provisional Sum, the following provisions apply:
  - (i) You must provide us with Your written instructions regarding such Prime Costs and/or Provisional Sum as soon as possible following a written request from Us to do so;
  - (ii) if You fail to provide such written instructions within a reasonable period following Our request, We may make a determination in respect of the relevant Prime Cost and/or Provisional Sum on Your behalf and You release Us from any liability associated with such determination; and
  - (iii) upon receipt of Your written instructions in respect of any outstanding Prime Costs and/or Provisional Sum or upon Our determination in respect of any outstanding Prime Costs and/or Provisional Sum in accordance with this clause, as applicable), the Prices shall be adjusted to reflect the value such Prime Costs and/or Provisional Sum.
- (d) The Prices have been calculated with reasonable care and skill, taking account of the information reasonably available to Us at the date of preparing the relevant Scope of Works, including the nature and location of the Property. However, We reserve the right, from time to time but prior to issuing any invoice to You, to increase the Prices:
  - (i) to take account of increases in the cost of performing the Works and/or supplying Goods and/or Services to You (which may include, but are not limited to, increases in the cost of energy, materials, labour, equipment or delivery) which are due to any factor beyond Our reasonable control or are due to Your failure to provide adequate information or instructions;
  - (ii) to take account of increases in the cost of performing the Works and/or supplying Goods and/or Services to You which are due to changes in Our regulatory compliance obligations, including:
    - (A) any statutory provisions being amended between the date of Our issuing the Scope of Works to You and the Works being completed;
    - (B) any direction by any government or regulatory authority having jurisdiction over the location of the Works to complete the Works to a specific standard not required when the Scope of Works was issued;
    - (C) any requirement to undertake the Works to a specified standard pursuant to a code or regulation which was not in existence at the time the original structure or the building was constructed and which results in a requirement to upgrade the structure or building; or
    - (D) any statutory provision or direction not current when the Scope of Works was issued which refer to the use of the Property and which were not previously disclosed to Us by You; and
  - (iii) to correct, without any liability on Our part, any errors or omissions in any Scope of Works, quotation, offer, current catalogue, website or price list produced by Us.

## 8. Payment

- (a) Notwithstanding any Form of Release given by You to Your Insurer (if applicable), to the extent that Your Insurer fails to make any such required payment to Us (including where Your Insurer declines to make any such payment on the basis that part or all of the Works are not covered by Your insurance policy or exceed the sum insured under Your insurance policy), You are primarily responsible for payment to Us of the cost of any Works in accordance with the relevant Payments Schedule.
- (b) We will issue invoices to You or Your Insurer (whichever is applicable) in respect of Works performed by Us, in accordance with the relevant Payments Schedule, setting out the amount due (including the cost of any materials and labour, commissions and any other applicable fees) for that part of the Works completed by Us in accordance with the Scope of Works up to the date of issuing Our invoice.
- (c) All invoices issued by Us to You or Your Insurer (whichever is applicable) in accordance with the relevant Payments Schedule are payable within 7 days from the date of issue by Us. For the avoidance of doubt, all invoices issued by Us are issued in accordance with the *Building and Construction Industry Security of Payment Act 2002* (Vic).
- (d) We reserve the right to pass on to You any additional costs (including merchant fees) incurred by Us where You pay Us by credit card (if applicable).
- (e) Payments due to Us must be made without any deduction or set-off. We may apply the amounts paid to Us in payment of any amount owed by You. If You dispute Our invoice or statement, You must still pay the entire amount. We will refund any agreed amount following resolution of the dispute.
- (f) If You or Your Insurer (whichever is applicable) fail to pay any invoice issued by Us (whether in whole or in part) within 30 days from the date of issue by Us, then, without limiting any other provision in these Trading Terms, You will be liable for, and indemnify Us in respect of:
  - (i) the total of all amounts outstanding in respect of Our invoices;
  - (ii) interest on any amount outstanding in respect of Our invoices, at a rate which is 2% above the rate set from time to time under the *Penalty Interest Rates Act 1983* (Vic) (such interest to be calculated daily and compounded monthly), until full payment has been made; and
  - (iii) all costs or expenses incurred by Us arising out of or in connection with collecting or attempting to collect any outstanding amounts from You (including, but not limited to, expenses and fees associated with or paid to or on account of collection costs, court costs, legal adviser fees and the fees or expenses of any other agents acting on Our behalf, all such amounts calculated on an indemnity basis), such amounts being an additional debt due and payable without demand from the date on which We incur the liability for the cost, expense or fee,and, without limiting any of the above, We may (in Our absolute discretion):



- (iv) suspend or cancel any further Works until full payment of all outstanding amounts owed to Us (including accrued interest if applicable) has been made or You have provided a bank guarantee in Our favour, in a form which is satisfactory to Us in Our absolute discretion, for the unpaid value of the Works (including accrued interest if applicable);
- (v) remove from the Property and materials or Goods which have not yet been incorporated into or affixed on the Property and have not yet been paid for;
- (vi) withdraw (in full or in part) any discount, concession, allowance, rebate or other benefit which was previously offered to You (if applicable); and
- (vii) disclose to Your Insurer Our reasons for taking any actions under this clause.

## 9. Title and Risk

- (a) Title to and ownership of building materials and/or or Goods provided by Us shall not pass to You until We have received full payment for such building materials and/or Goods and for any other amounts owing by You in relation to any other matter (including payments in respect of other goods or services provided to You from time to time) and You shall hold such building materials and/or Goods (including where they have been converted or changed by any process) as fiduciary bailee and agent for Us.
- (b) Risk in building materials and/or or Goods provided by Us shall pass to You upon delivery to the Property in accordance with the Scope of Works.

## 10. Insurance

- (a) We will keep in force all such insurance cover as We are required to hold in respect of the Scope of Works (limited in accordance with the extent and the value of the Scope of Works) and We will provide copies of the relevant insurance policies within a reasonable period of receiving a written request from You.
- (b) If the Scope of Works is deemed under the Act to be a major domestic building contract, We will obtain complying warranty insurance prior to the commencement of the relevant Works and provide a copy of the relevant insurance policy to You.
- (c) If We are required to insure the Property under a 'Construction Risks Insurance Policy', the value of such insurance cover will be limited in accordance with the extent and the value of the Scope of Works.
- (d) You must at all times maintain Your own insurance cover in respect of the Property, regardless of the extent of the existing damage. You warrant and represent that You have read and understood Your insurance policy to the extent that it applies to the Works and the insurance coverage provided in relation to the Works.

## 11. Limitation of Liability and Warranties

- (a) The *Competition and Consumer Act 2010* (Cth) may imply certain conditions and warranties into these Trading Terms that cannot be excluded or modified. These Trading Terms do not exclude or modify any of those conditions if to do so would contravene that law or make any part of these Trading Terms void.
- (b) Subject to (a) of this clause and without limiting the terms of any written warranty given separately by Us, all warranties and conditions that may be implied into these Trading Terms are excluded and Our liability for breach of any implied condition or warranty that cannot be excluded is limited (at Our option) to:
  - (i) in respect of any Works: the re-supply of the Works or reimbursement of the cost of supplying the Works again or refunding to You any payments made in respect of the Works;
  - (ii) in respect of Goods: the repair or replacement of Goods or reimbursement of the cost of having those Goods repaired or replaced or refunding to You any payments made in respect of the Goods; and
  - (iii) in respect of Services: the re-supply of Services or reimbursement of the cost of supplying the Services again or refunding to You any payments made in respect of the Services.
- (c) Despite any other provision of these Trading Terms, to the extent permitted by law, We have no liability to You nor will You be entitled to claim against Us in respect of:
  - (i) any loss or damage caused by delay in the performance of the Works and/or delivery of Goods and/or supply of Services;
  - (ii) any consequential loss or damage (including, but not limited to, loss of profit, loss of revenue, loss of expected savings and opportunity costs) arising out of or in connection with the Works and/or supply of the Goods and/or Services or otherwise at law or in equity; or
  - (iii) any loss or damage to Your Property arising out of or in connection with Our completion of the Works in accordance with the Scope of Works and these Trading Terms.
- (d) You acknowledge that You have not relied on any representation made by Us which is not expressly stated in the relevant Scope of Works and/or these Trading Terms.
- (e) You acknowledge that the exclusions and limitations in this clause are customary for suppliers of goods and services equivalent to the Works, Goods and Services and are fair and reasonable given the nature of the Works and Goods and Services and the applicable Prices.
- (f) This clause shall survive termination of these Trading Terms.

## 12. Dispute Resolution

- (a) Where any dispute arises in in relation to any matter arising directly or indirectly out of the Scope of Works and/or these Trading Terms ("**Dispute**") You agree to comply with the dispute resolution procedure described in (b) of this clause and acknowledge that You are not entitled to commence any litigation or arbitration in relation to the Dispute until You have complied with this clause.



- (b) The dispute resolution procedure required to be complied with prior to the commencement of litigation or arbitration is as follows:
- (i) where a Dispute arises between Us and You, either We or You may serve a written notice (the "**Dispute Notice**") on the other and, where We have been directed by Your Insurer to complete the Scope of Works, the Insurer detailing the nature of the Dispute;
  - (ii) both We and You must make reasonable efforts to resolve the Dispute by negotiation (together with the Insurer, if applicable);
  - (iii) if the Dispute is not resolved within 10 business days of the receipt of the Dispute Notice, We or You may by notice in writing to the other (the "**Mediation Notice**") require that the Dispute be referred to mediation;
  - (iv) within 28 days of receipt of the Mediation Notice the Dispute will be referred to a mediator as agreed between Us and You, and failing agreement, to a mediator appointed by the President of the Law Institute of Victoria on the application of Us or You;
  - (v) the costs of the mediator will be paid equally by Us and You but otherwise both We and You must pay our respective costs of the mediation; and
  - (vi) both We and You must approach the mediation in good faith and make a reasonable attempt to settle the Dispute by mediation and within the framework determined by the mediation.
- (c) If the mediation fails to settle the Dispute, We or You may institute litigation or arbitration. If the Insurer (if applicable) engages another builder to complete any Works, You must pay Us in full for all Works completed to date and We will not be liable to cover the costs of engaging the new builder in any way.
- (d) Nothing in this clause will prevent Us from pursuing any amounts owed by You to Us as We see fit or prevent Us or You from seeking urgent interlocutory relief where failure to obtain such relief would cause irreparable damage Us or You (whichever is applicable).

### 13. Confidentiality

All information provided in connection with the Scope of Works and/or these Trading Terms must remain confidential and must not be disclosed to any other person (other than the receiving party's employees and professional advisers and then only to the extent such employees and professional advisers have a need to know) except:

- (a) with the disclosing party's prior written consent (which may be reasonably withheld);
- (b) if required under these Trading Terms, by any government or regulatory authority or otherwise by law;
- (c) in connection with legal proceedings relating to the Scope of Works and/or these Trading Terms;
- (d) if the information is already publicly available other than as a result of a breach of these Trading Terms;
- (e) to a related entity of the receiving party (provided that the related entity undertakes to observe the confidentiality obligations in this clause); or
- (f) to a third party properly and necessarily involved in the completion of the Works.

### 14. Guarantee and Indemnity

- (a) The Guarantor hereby guarantees the due and punctual payment by signature of all monies that becomes due and payable by You to Us under these Trading Terms and also the due and punctual performance by You of Your obligations pursuant to these Trading Terms (the "**Guarantee**").
- (b) In consideration for Us entering into these Trading Terms with You, the Guarantor hereby charges in Our favour the whole of the Guarantor's estate and interest, legal and equitable, in the Guarantor's personal and real property to secure the Guarantor's obligations pursuant to these Trading Terms.
- (c) Without limiting Our rights under these Trading Terms, the Guarantor acknowledges and agrees that the charge on the Guarantor's property shall provide a caveatable interest in Our favour and the Guarantor consents to Us registering Our interest in the Guarantor's property, including by way of a caveat.
- (d) The Guarantee is a continuing guarantee and shall not be discharged in whole or in part by the payment at any time of any part of the money payable by You pursuant to these Trading Terms or by settlement of account, intervening payment, or other matter or thing whatsoever.
- (e) The Guarantee shall not be affected or prejudiced by any variation or modification at any time to these Trading Terms.
- (f) The Guarantee shall at all times be valid and enforceable against the Guarantor notwithstanding:
  - (i) that no demand for payment has been made to You; and
  - (ii) that You were prohibited (whether expressly or by implication) by law, contract or otherwise from entering into these Trading Terms or lacked capacity, power or authority to enter into these Trading Terms.
- (g) The Guarantee is irrevocable and shall not be affected by the death, bankruptcy or incapacity of any of the Guarantors.
- (h) If any payment made by You to Us is subsequently avoided or set aside by reason of any statutory provision or otherwise, such payment shall not prejudice or otherwise affect the Guarantee, or Our rights pursuant to this clause 14, to the intent that We shall, with respect to Our rights to recover pursuant to this clause 14 any monies secured, be restored to the same position in which We would have been had such payment not been made.
- (i) In addition, the Guarantor agrees to indemnify Us in respect of all costs, charges and expenses whatsoever, which We may incur by reason of any default by You under or in relation to these Trading Terms.
- (j) The Guarantor is liable to pay, and indemnify Us for, Our reasonable expenses incurred in enforcing the Guarantee.



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- (k) If more than one party signs as Guarantor, in this clause 14 each reference to "Guarantor" is a reference to them jointly and each of them individually.
15. **General**
- (a) We may sub-contract the production, manufacture, supply or delivery of all or some of the Scope of Works and/or Goods and/or Services.
  - (b) Any failure by Us to insist on strict compliance with these Trading Terms or any delay by Us in exercising Our rights under these Trading Terms will not constitute a variation or waiver of any provision of these Trading Terms or of any right available to us.
  - (c) If part of all of any provision of these Trading Terms or its application to any person or circumstance is held to be illegal or unenforceable, the provision will be interpreted so as to ensure it is not illegal or unenforceable. If any provision or part of it cannot be so interpreted, the provision or relevant part of it will be severed from these Trading Terms and the remaining provisions of these Trading Terms will continue in force.
  - (d) Where You are comprised of 2 or more persons, an agreement or obligation to be performed or observed by You binds those persons jointly and each of them severally.
  - (e) Any notice or document required to be served under these Trading Terms will be sufficiently served if delivered or posted by pre-paid post to the address of that party as notified by that party from time to time in writing. If the notice or document is posted, service will be deemed to have been effected 3 working days after the date on which the document or notice was posted.
16. **Governing Law**
- Unless these Trading Terms relate to domestic building works in a State other than the State of Victoria, these Trading Terms are governed by the laws of the State of Victoria, Australia. All parties submit to the non-exclusive jurisdiction of the Courts of the State of Victoria, Australia.