

Affinity Concrete Pumping Pty Ltd T/A Affinity Concrete Pumping – Terms & Conditions of Trade

1. Definitions

- 1.1 **"ACP"** means Affinity Concrete Pumping Pty Ltd ATF McIntyre Family Trust T/A Affinity Concrete Pumping, its successors and assigns or any person acting on behalf of and with the authority of Affinity Concrete Pumping Pty Ltd ATF McIntyre Family Trust T/A Affinity Concrete Pumping.
- 1.2 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting ACP to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, Contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.4 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.5 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when using ACP's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.6 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.7 **"Incidental Items"** means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by ACP in the course of it conducting, or supplying to the Client, any Services.
- 1.8 **"Plant"** means the concrete pump (including all associated accessories, attachments, ancillary equipment, machinery and motor vehicles).
- 1.9 **"Price"** means the Price payable (plus any GST where applicable) for the Services as agreed between ACP and the Client in accordance with clause 6 of this Contract.
- 1.10 **"Services"** mean all Services supplied by ACP to the Client at the Client's request from time to time.

2. Acceptance

- 2.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Services provided by ACP.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Services on credit shall not take effect until the Client has completed a credit application with ACP and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Services requested exceeds the Client's credit limit and/or the account exceeds the payment terms, ACP reserves the right to refuse delivery.
- 2.6 In the event :
- (a) of a mechanical breakdown of the Plant, ACP shall make every reasonable effort to repair the Plant or to supply another Plant to complete the Services. In the event of such breakdown, the liability of ACP whether in contract, tort or otherwise shall be specifically limited to a maximum amount of damages equal to the Price of the Services accrued up to the time of the breakdown. ACP shall not be liable for any loss whatsoever suffered by the Client or others. ACP shall not be liable for any loss caused by breakdown of the Plant due to defective or un-pumpable concrete; and
 - (b) that ACP is required to provide the Services outside ACP's standard hours of operation, (including, but not limited to, working through lunch breaks, weekends and/or Public Holidays), then ACP reserves the right to charge the Client additional labour charges (penalty rates will apply), unless otherwise agreed between ACP and the Client. The Client further acknowledges that the operating hours of the Plant may be subject to statutory requirements.
- 2.7 The Client accepts and acknowledges that ACP shall only supply the Plant in accordance with the Client's booking, and shall transfer concrete supplied at ground level to such parts of the site as the Client shall direct. This shall be affected by pipeline from a portable pumping Plant. ACP's responsibilities do not include any other function, including, but not limited to, setting or placing the concrete in position or transferring the concrete by any means other than by the pump and pipeline.
- 2.8 The Client further accepts that ACP will supply and the Client will receive the Plant at the kerb alignment. If at the Client's request the Plant enters the site, the Client will indemnify and hold indemnified ACP, its servants and agents against all liability and against all actions, suits, proceedings, claims, demands, costs and expenses incurred by ACP to its servants or its agents out of or in any way relating to the presence of the Plant on the site.
- 2.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to ACP as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Services on the Client's

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behalf and/or to request any variation to the Services on the Client's behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies ACP in writing that said person is no longer the Client's duly authorised representative).

- 3.2 In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise ACP in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to ACP for all additional costs incurred by ACP (including ACP's profit margin) in providing any Services or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that ACP shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by ACP in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by ACP in respect of the Services.
- 4.2 In circumstances where the Client is required to place an order for the Services, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for the Services (whether they are made to order Incidental Items or not) ("**Client Error**"). The Client must pay for all Services it orders from ACP notwithstanding that such Services suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take delivery of such Services. ACP is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

5. Change in Control

- 5.1 The Client shall give ACP 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 number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by ACP as a result of the Client's failure to comply with this clause.

6. Price and Payment

- 6.1 At ACP's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by ACP to the Client upon placement of an order for the Services; or
 - (b) ACP's quoted Price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 ACP reserves the right to change the Price:
- (a) if a variation to the Services originally scheduled (including any applicable plans, scope of work, or specifications) is requested; or
 - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to site access, inaccurate measurements, plans or specifications supplied by the Client, safety considerations, availability of equipment, additional excavation work required prior to pouring, additional labour where concrete is required to be manually wheel barrowed from the delivery vehicle, ground conditions are unsuitable or reactive, hard rock or other barriers below the surface etc.) which are only discovered on commencement of the Services; or
 - (c) increases to ACP in the cost of taxes, levies, disposal costs with excess slurry (including, but not limited to, an environmental fee), materials and labour, any fees, fines, infringements or penalties, which is beyond ACP's control.
- 6.3 Variations will be charged for on the basis of ACP's quotation, and will be detailed in writing, and shown as variations on ACP's invoice. The Client shall be required to respond to any variation submitted by ACP within ten (10) working days. Failure to do so will entitle ACP to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by ACP, which may be:
- (a) the date specified on any invoice or other form as being the date for payment; or
 - (b) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by ACP.
- 6.5 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and ACP.
- 6.6 ACP may in its discretion allocate any payment received from the Client towards any invoice that ACP determines and may do so at the time of receipt or at any time afterwards.
- 6.7 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 ACP nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify ACP in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as ACP investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in ACP placing the Client's account into default and subject to default interest in accordance with clause 18.1.
- 6.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to ACP an amount equal to any GST ACP must pay for any supply by ACP under this or any other agreement for providing ACP's Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Provision of the Services

- 7.1 At ACP's sole discretion delivery of the Services shall take place when the Services are supplied to the Client at the Client's nominated address.
- 7.2 Subject to clause 7.3 it is ACP's responsibility to ensure that the Services start as soon as it is reasonably practicable.
- 7.3 The Services' commencement date will be extended, and the completion date extended by whatever time is reasonable in the event that ACP claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond ACP's control, including but not limited to any failure by the Client to:

- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify ACP that the site is ready.
- 7.4 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this Contract.
- 7.5 The Client shall take delivery of the materials tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed five percent (5%); and
 - (b) the Price shall be adjusted pro rata to the discrepancy or to the value that has been delivered.
- 7.6 Any time specified by ACP for delivery of the Services is an estimate only and ACP will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that ACP is unable to supply the Services as agreed solely due to any action or inaction of the Client then ACP shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.
- 8. Risk**
- 8.1 Irrespective of whether ACP retains ownership of any Incidental Items all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as ACP may repossess the Incidental Items in accordance with clause 13.3(f). The Client must insure all Incidental Items on or before delivery.
- 8.2 ACP reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Incidental Items as a result of the Client's failure to insure in accordance with clause 8.1.
- 8.3 Detailed drawings of any services that will be embedded in the concrete are to be provided to ACP prior to commencement of any Services. Whilst all due care will be taken no liability will be accepted by ACP for damage to the services or any other element embedded in the concrete.
- 8.4 ACP:
- (a) shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, ACP accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information;
 - (b) accepts no liability for the slump strength quality or suitability of the concrete pumped by it, nor for any defects, inadequacy, or failing of foundations, form work or any other part of the site, or the Client's instructions, and may complete the Services without reporting any apparent defect or failing aforesaid;
 - (c) gives no guarantee (expressed or implied) as to the length of time the curing process will take and/or against cracking of concrete that may occur naturally in the Services such as:
 - (i) hairline cracking of paving and grout; or
 - (ii) damage caused by contact with chemicals, solvents, oils or any other substances; or
 - (iii) the effects by elements such as heat exposure or wet weather conditions that prolong the curing process.
 - (d) shall not be liable for any defect in the Services if the Client does not follow ACP's recommendations, including:
 - (i) to water the concrete periodically to limit the risk of possible cracking due to weather conditions;
 - (ii) that no foot traffic and/or any vehicles on the concrete for a minimum of forty-eight (48) hours but preferably seven (7) days; and
 - (iii) that no heavy items (including but not limited to, pots, furniture etc.) is placed on the concrete area for a minimum of twenty-four (24) hours.
- 8.5 The Client acknowledges and accepts that:
- (a) variations of colour and texture are inherent in concrete. ACP shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture between different batches of product;
 - (b) concrete is a porous material and as a consequence ACP cannot be held responsible for holes and pinholes, however numerous, that appear on the surface after completion of the Services;
 - (c) ACP can only visually check the concrete and cannot guarantee the mix is free of foreign objects. If the concrete is divided into more than one truck ACP cannot guarantee the texture is consistent between trucks; and
 - (d) materials supplied may:
 - (i) expand, contract or distort as a result of exposure to heat, cold, weather;
 - (ii) mark or stain if exposed to certain substances; and
 - (iii) be damaged or disfigured by impact or scratching.
- 8.6 Any advice, recommendation, information, assistance or service provided by ACP in relation to the Services supplied is given in good faith to the Client, or the Client's agent and is based on ACP's own knowledge and experience and shall be accepted without liability on the part of ACP. Where such advice or recommendations are not acted upon then ACP shall require the Client or their agent to authorise commencement of the Services in writing. ACP shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 9. Client's Responsibilities**
- 9.1 Prior to ACP commencing any Services the Client must advise ACP of the precise location of all known asbestos/hazardous materials on the site and clearly mark the same. Removal from the site and the disposal of asbestos/hazardous materials shall at all times be the Client's responsibility unless otherwise agreed in writing.
- 9.2 The Client shall ensure that ACP has clear and free access to the site at all times to enable them to undertake the Services (and that such access is suitable to accept the weight of ACP's Plant and other equipment as may be deemed necessary by ACP) to enable the scheduled Services to be completed in accordance with the agreed schedule.
- 9.3 If the Services are interrupted by the failure of the Client to adhere to the schedule agreed to between ACP and the Client, any additional costs will be invoiced to the Client as a variation in accordance with clause 6.2.

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- 9.4 ACP shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of ACP; and the Client agrees to indemnify ACP against all costs incurred by ACP in recovering any of ACP's Plant in the event they become bogged or otherwise immovable.
- 9.5 The Client acknowledges and accepts to:
- (a) undertake all necessary preparatory work on the site to enable ACP to provide the Services;
 - (b) ensure that:
 - (i) the right Plant is ordered to provide that Services;
 - (ii) a maximum clearance of three and a half metres (3.5m) is allowed in respect of overhead obstacles, tress or power lines; and
 - (iii) only pumpable concrete is supplied to the Plant, and that the inclusion of additives is notified to ACP. The specifications of the concrete mix shall be provided to ACP at the time of the booking where additives are included or when the compression is less than twenty megapascals (20MPa) or exceeds twenty-five megapascals (25MPa).
 - (c) provide:
 - (i) safe access to the site (including, but not limited to, a suitable and firm access way to the electric power supply, and safety barriers where required by ACP);
 - (ii) suitable hardstand parking for the Plant. ACP may at the Client's request and expense provide towing of the Plant from the site to hard standing ground. Where such parking is on a public roadway, the Client shall be responsible for any traffic management and obtain (at the expense of the Client) all relevant permits as may be required, and shall be responsible for any/all notices or infringements received by ACP as a result of ACP's attendance at the site;
 - (iii) maintenance, cleaning and the repair of entry and exit points from the site, over any third-party property or public roadway. ACP will accept no liability for any maintenance, cleaning or repair of entry and exit points from the site, including any local or state/government charges or fines relating to mud or debris on the roadway;
 - (iv) mains pressure water supply or the equivalent at a distance of not more than ten (10) metres from the hardstand parking; and
 - (v) prior to the commencement of the Services on each day, water, electricity services, scaffolding, and any works instructions and supervision necessary to enable the immediate and uninterrupted provision of the Service by ACP.
- 9.6 The Client shall be responsible to make safe any underground services and/or trenches within the set-up area of the pump.
- 9.7 In the event that the Client fails to comply with any of the provisions of clause 9.2, the Client acknowledges and agrees that ACP reserves the right to cancel the supply of Services (in accordance with clause 19), and the Client shall be liable to pay ACP a cancellation fee equivalent to ACP's minimum hire charges.
- 9.8 The Client shall supply an area suitable for washing out ACP's Plant and equipment and for depositing all unused concrete and slurry that will comply with local council and Environmental Protection Agency (EPA) guidelines and regulations.
- 9.9 Site Inductions
- (a) in the event the Client requires an employee or sub-contractor of ACP to undertake a site induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to pay ACP's standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where ACP is in control of the site, the Client and/or the Client's third party contractors must initially carry out ACP's Health & Safety induction course before access to the site will be granted. Inspection of the site during the course of the Services will be by **appointment only** and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by ACP.

10. Measurement of Concreting Services

- 10.1 At the completion of the Services the Client or the representative of the Client shall be in attendance and the Services shall then be duly measured. In the absence of either the Client or their representative ACP 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 Services completed.

11. Compliance with Laws

- 11.1 The Client and ACP shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any work health and safety laws (WHS) relating or any other relevant safety standards or legislation pertaining to the Services.
- 11.2 Both parties acknowledge and agree:
- (a) to comply with the National Construction Code of Australia (NCC) and comply with section 74AA (products associated with building works and/or the intended use) and section 74AE (Chain of Responsibility) of the QBCC Act 1991, in respect of all workmanship and building products to be supplied during the course of the Services; and
 - (b) that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 11.3 Where the Client has supplied products for ACP to complete the Services, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the intended use and any faults inherent in those products. However, if in ACP's opinion, it is believed that the materials supplied are non-conforming products and will not conform with state and/or territory regulations, then ACP shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 6.2.
- 11.4 The Client shall obtain (at the expense of the Client) all licenses, permits and approvals that may be required for the Services.

12. Insurance

- 12.1 ACP shall maintain Workers' Compensation Insurance, Public Liability Insurance and insurance in respect of risk of damage to the Services for the duration of the Services. It is the Client's responsibility to ensure that they are similarly insured.

13. Title

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- 13.1 ACP and the Client agree that and the Client's obligations to ACP for the supply of Services shall not cease (and where it is intended that the ownership of Incidental Items shall not pass to the Client) until:
- (a) the Client has paid ACP all amounts owing for the Services; and
 - (b) the Client has met all other obligations due by the Client to ACP in respect of all Contracts between ACP and the Client.
- 13.2 Receipt by ACP 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 and until then ACP's ownership in the Incidental Items or rights in respect of the Services shall continue.
- 13.3 It is further agreed that, until ownership of the Incidental Items passes to the Client in accordance with clause 13.1:
- (a) the Client is only a bailee of the Incidental Items and must return the Incidental Items to ACP immediately upon request by ACP;
 - (b) the Client holds the benefit of the Client's insurance of the Incidental Items on trust for ACP and must pay to ACP the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Client sells, disposes or parts with possession of the Incidental Items then the Client must hold the proceeds of sale of the Incidental Items on trust for ACP and must pay or deliver the proceeds to ACP on demand;
 - (d) the Client should not convert or process the Incidental Items 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 ACP and must dispose of or return the resulting product to ACP as ACP so directs;
 - (e) the Client shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of ACP; and
 - (f) the Client irrevocably authorises ACP to enter any premises where ACP believes the Incidental Items are kept and recover possession of the Incidental Items.

14. Personal Property Securities Act 2009 ("PPSA")

- 14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 14.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- (a) all Incidental Items previously supplied by ACP to the Client;
 - (b) all Incidental Items will be supplied in the future by ACP to the Client and the proceeds from such Incidental Items; and
 - (c) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to ACP for Services – that have previously been provided and that will be provided in the future by ACP to the Client.
- 14.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which ACP may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 14.3(a)(i) or 14.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, ACP for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Incidental Items charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of ACP;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items or the proceeds of such Incidental Items in favour of a third party without the prior written consent of ACP.
- 14.4 ACP 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.
- 14.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 14.7 Unless otherwise agreed to in writing by ACP, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.8 The Client must unconditionally ratify any actions taken by ACP under clauses 14.3 to 14.5.
- 14.9 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

- 15.1 In consideration of ACP agreeing to provide its Services, the Client grants ACP a security interest by way of a floating charge (registerable by ACP pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Services under this Contract and/or permit ACP to appoint a receiver to the Client in accordance with the *Corporations Act 2001* (Cth).
- 15.2 The Client indemnifies ACP from and against all ACP's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising ACP's rights under this clause.
- 15.3 In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 13.1, 14.2 and 15.1 as applicable, is deemed insufficient by ACP to secure the repayment of monies owed by the Client to ACP, the Client hereby grants ACP a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

16. Defects, Warranties and the Competition and Consumer Act 2010 ("CCA")

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- 16.1 The Client must inspect ACP's Services on completion of the Services, and must within seven (7) days notify ACP in writing of any evident defect in the Services or Incidental Items provided (including ACP's workmanship) or of any other failure by ACP to comply with the description of, or quote for, the Services which ACP was to supply. The Client must notify any other alleged defect in ACP's Services or Incidental Items as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow ACP to review the Services or Incidental Items that were provided.
- 16.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions **(Non-Excluded Guarantees)**.
- 16.3 ACP acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, ACP makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. ACP's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.5 If the Client is a consumer within the meaning of the CCA, ACP's liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.6 If ACP is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then ACP may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services and Incidental Items which have been provided to the Client which were not defective.
- 16.7 If the Client is not a consumer within the meaning of the CCA, ACP's liability for any defective Services or Incidental Items is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by ACP at ACP's sole discretion;
 - (b) otherwise negated absolutely.
- 16.8 Notwithstanding clauses 16.1 to 16.7 but subject to the CCA, ACP shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Incidental Items;
 - (b) the Client using the Incidental Items for any purpose other than that for which they were designed;
 - (c) the Client continuing to use any Incidental Items after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Services by the Client or any third party without ACP's prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by ACP;
 - (f) fair wear and tear, any accident, or act of God.

17. Intellectual Property

- 17.1 Where ACP has designed, drawn or developed Incidental Items for the Client, then the copyright in any Incidental Items shall remain the property of ACP. Under no circumstances may such designs, drawings and documents be used without the express written approval of ACP.
- 17.2 The Client warrants that all designs, specifications or instructions given to ACP will not cause ACP to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify ACP against any action taken by a third party against ACP in respect of any such infringement.
- 17.3 The Client agrees that ACP may (at no cost) use for the purposes of marketing or entry into any competition, any Incidental Items which ACP has created for the Client.

18. Default and Consequences of Default

- 18.1 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 ACP's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes ACP any money, the Client shall indemnify ACP from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Client would be liable;
- in regard to legal costs on a solicitor and own client basis incurred in exercising ACP's rights under these terms and conditions, internal administration fees, ACP's Contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 18.3 Further to any other rights or remedies ACP may have under this Contract, if a Client has made payment to ACP, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by ACP under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 18.4 Without prejudice to ACP's other remedies at law ACP shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to ACP shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to ACP becomes overdue, or in ACP's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by ACP;
 - (c) the Client becomes insolvent, 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

19. Cancellation

- 19.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("**the Breaching Party**") the other party may suspend or terminate the supply of Services to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.

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- 19.2 If ACP, due to reasons beyond ACP's reasonable control, is unable to deliver any Services to the Client, ACP may cancel any Contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice ACP shall repay to the Client any money paid by the Client for the Services. ACP shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 The Client may cancel delivery of the Services by written notice served within forty-eight (48) hours of placement of the order. If the Client cancels delivery in accordance with this clause 19.3, the Client will not be liable for the payment of any costs of ACP, except where a deposit is payable. Failure by the Client to otherwise accept delivery of the Services shall place the Client in breach of this Contract.

20. Privacy Policy

- 20.1 All emails, documents, images or other recorded information held or used by ACP is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. ACP acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). ACP acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by ACP that may result in serious harm to the Client, ACP will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to ACP in respect of Cookies where the Client utilises ACP's website to make enquiries. ACP agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to ACP when ACP sends an email to the Client, so ACP may collect and review that information ("collectively Personal Information")
- If the Client consents to ACP's use of Cookies on ACP's website and later wishes to withdraw that consent, the Client may manage and control ACP's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the website.
- 20.3 The Client agrees for ACP to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by ACP.
- 20.4 The Client agrees that ACP may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 20.5 The Client consents to ACP being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 20.6 The Client agrees that personal credit information provided may be used and retained by ACP for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Services.
- 20.7 ACP may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 20.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 20.3 above;
 - (b) name of the credit provider and that ACP is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided ACP is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and ACP has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of ACP, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 20.9 The Client shall have the right to request (by e-mail) from ACP:
- (a) a copy of the Personal Information about the Client retained by ACP and the right to request that ACP correct any incorrect Personal Information; and
 - (b) that ACP does not disclose any Personal Information about the Client for the purpose of direct marketing.

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- 20.10 ACP will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 20.11 The Client can make a privacy complaint by contacting ACP via e-mail. ACP will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 21. Service of Notices**
- 21.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 21.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 22. Trusts**
- 22.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not ACP may have notice of the Trust, the Client covenants with ACP as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not during the term of the Contract without consent in writing of ACP (ACP will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.
- 23. Building Industry Fairness (Security of Payment) Act 2017**
- 23.1 At ACP's sole discretion, if there are any disputes or claims for unpaid Services then the provisions of the Building Industry Fairness (Security of Payment) Act 2017 may apply.
- 23.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building Industry Fairness (Security of Payment) Act 2017 of Queensland, except to the extent permitted by the Act where applicable.
- 24. General**
- 24.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 24.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of Queensland, and are subject to the jurisdiction of the courts in Caboolture, Queensland.
- 24.4 ACP may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- 24.5 The Client cannot licence or assign without the written approval of ACP.
- 24.6 ACP may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of ACP's sub-contractors without the authority of ACP.
- 24.7 The Client agrees that ACP may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for ACP to provide Services to the Client.
- 24.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments, including but not limited to, any Government imposed border lockdowns, etc., ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to ACP, once the parties agree that the Force Majeure event has ceased.
- 24.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 24.10 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.

24.11 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.