

Hutchison Construction Services Pty Ltd – Terms & Conditions of Trade

1.1	Definitions	any reason (including the discovery of asbestos) that the Contractor, or employees of the Contractor, reasonably form the opinion that the Client's premises is not safe for the installation of Materials to the Client's premises. The Contractor shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 5.2 above) until the Contractor is satisfied that it is safe for the installation to proceed.	12.7	Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 157 of the PSPSA.	17.4	Cancellation of orders for products made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
1.2	"Contractor" means Hutchison Construction Services Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Hutchison Construction Services Pty Ltd.		12.8	The Client shall unconditionally ratify any actions taken by the Contractor under clauses 12.3 to 12.5.	18.1	Privacy Act 1988
1.3	"Client" means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.		12.9	Subject to any express provisions to the contrary (including those contained in this clause 12) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the Consumer Credit Act 1984.	18.2	The Client agrees for the Contractor to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit ratings, etc.) in relation to the Client in relation to credit provided by the Contractor.
1.4	"Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Contractor to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).	6.5			18.3	The Client agrees that the Contractor may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
1.5	"Price" means the Price payable (plus any GST where applicable) for the Works as agreed between the Contractor and the Client in accordance with clause 4 below.	6.6			18.4	To assess an applicant for the Client and/or
1.6	"GST" means Goods and Services Tax as defined within the 'A New Tax System (Goods and Services Tax) Act 1999' (Cth).	6.7			18.5	To notify other credit providers of a default by the Client; and/or
2.1	Acceptance				18.6	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
2.2	The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.	6.8			18.7	To assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
2.3	These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail in the event of any inconsistency with any other document or contract between the Client and the Contractor.	6.9			18.8	The Client consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit.
2.4	Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 and any other applicable provisions of that Act or any Regulations referred to in that Act.	6.9			18.9	The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other agreed purposes or required by):
3.1	Change in Control	(c)			18.10	the provision of Works; and/or
3.2	The Client shall give the Contractor not less than fourteen (14) days' prior written notice of any proposed change of ownership of the Client, and/or any other details of the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number(s), or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.	7.1			18.11	analysing, verifying and/or checking the Client's credit, payment and status in relation to the provision of Works; and/or
4.1	Price and Payment				18.12	processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
4.2	At the Contractor's sole discretion the Price shall be either:				18.13	enabling the collection of amounts outstanding in relation to the Works.
4.3	(a) as indicated on invoices provided by the Contractor to the Client in respect of Works performed or Materials supplied; or	7.2			18.14	The Contractor may give information about the Client to a CRB for the following purposes:
4.4	(b) the Contractor's Price at the delivery of the Works according to the Contractor's current price list; or				18.15	(a) to obtain a consumer credit report;
4.5	(c) the Contractor's quoted Price (subject to clause 4.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within seven (7) days.	8.1			18.16	(b) allow the CRB to create or maintain a credit information file about the Client including credit ratings;
4.6	The Contractor reserves the right to vary the Price (including but not limited to, changes in the Client's name, address, contact phone or fax number(s), or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.	8.2			18.17	(c) The information given in the CRB may include:
4.7	(a) if a variation to the Materials which are to be supplied is requested; or				18.18	(a) personal information as outlined in 18.1 above;
4.8	(b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or				18.19	(b) name of the credit provider and that the Contractor is a current credit provider to the Client;
4.9	(c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by a third party not being completed, change of design, etc.) which are only discovered on commencement of the Works; or	9.1			18.20	(c) whether the credit provider is a licensee;
4.10	(d) in the event of increases to the Contractor in the cost of labour or Materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond the Contractor's control.	9.2			18.21	(d) type of consumer credit;
4.11	4.3 Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Client shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor 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.	10.1			18.22	(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);
4.12	4.4 At the Contractor's sole discretion a non-refundable deposit may be taken at the time of their completion.	10.2			18.23	(f) advice of consumer credit defaults, 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 the Contractor has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
4.13	4.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:	10.3			18.24	information that, in the opinion of the Contractor, the Client has committed a serious credit infringement;
4.14	(a) on completion of the Works; or	11.1			18.25	advice that the amount of the Client's overdue payment is equal to or exceeds one hundred and fifty dollars (\$150).
4.15	(b) before completion of the Works; or				18.26	The Client shall have the right to request (by e-mail from the Contractor:
4.16	(c) by way of progress payments in accordance with the Contractor's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed;	11.2			18.27	a copy of the information about the Client retained by the Contractor and the right to request that the Contractor correct any incorrect information; and
4.17	(d) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;	11.3			18.28	that the Contractor does not disclose any personal information about the Client for the purpose of direct marketing.
4.18	(e) the date specified on any invoice or other form as being the date for payment; or	11.4			18.29	The Contractor will destroy personal information upon the Client's request by e-mail or otherwise, and will take all reasonable steps in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
4.19	(f) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by the Contractor.	11.5			18.30	The Client can make a privacy complaint by contacting the Contractor via e-mail. The Contractor will respond to that complaint within seven (7) days of receipt and will take all 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 .
4.20	4.6 Payment may be made by cash, cheque, bank cheque, electronic line banking, credit card (surcharge may apply per transaction), or by any other method as agreed to between the Client and the Contractor.	11.6			18.31	Dispute Resolution
4.21	4.7 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 the Contractor nor to withhold or payment of any invoice because part of that invoice is in dispute.	11.7			19.1	If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall meet at least once and attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by post or sent by certified mail to the other party refer the dispute to arbitration. Any arbitration shall be referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
4.22	4.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this contract or for the sale of any Materials or Materials. 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.	11.8			19.2	conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Arbitration.
5.1	Provision of the Works	(f)			19.3	20. Building and Construction Industry Security of Payments Act 1999
5.2	Subject to clause 5.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.				20.1	At the Contractor's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
5.3	The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Client to:	12.1			20.2	Nothing in this contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales. Except to the extent permitted by the Act where applicable.
5.4	(a) make a selection; or				20.3	Service of Notices
5.5	(b) have the site ready for the Works; or				21.1	Any written notice given under this contract shall be deemed to have been given and received:
5.6	(c) notify the Contractor that the site is ready.				21.2	(a) by handing the notice to the other party, in person;
5.7	At the Contractor's sole discretion, the cost of providing the Works is either included in the Price or is in addition to the Price.	12.2			21.3	(b) by sending it to the address of the other party as stated in this contract;
5.8	The Contractor may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.	12.3			21.4	(c) by sending it by registered post to the address of the other party as stated in this contract;
5.9	Any time specified by the Contractor for delivery of the Works is an estimate only and the Contractor is not 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 Works to be supplied at the time and place as was arranged between both parties in the event that the Contractor is unable to supply the Works as agreed solely due to any action or inaction of the Client, then the Contractor shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.	12.4			21.5	(d) if the Client fails to make an application to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
6.1	Assignment				21.6	(e) if sent by email to the other party's last known email address.
6.2	If the Contractor retains ownership of the Materials under clause 11 then where the Contractor is supplying Materials, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:	12.5			21.7	Any notice that is posted shall be deemed to have been served, unless the Client provides written notice to the other party by the ordinary course of post, the notice would have been delivered.
6.3	(a) the Client or the Client's nominated carrier takes possession of the Materials at the Contractor's address; or	12.6			22.1	General
6.4	(b) the Materials are delivered by the Contractor or the Contractor's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).				22.2	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 the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
6.5	Notwithstanding the provisions of clause 6.1 if the Client specifically requests the Contractor to leave Materials outside the Contractor's premises for collection, the Contractor shall be deemed to have accepted that such material shall be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all, in the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be the Client's responsibility.	12.7			22.3	These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which the Contractor has its principal place of business, and are subject to the jurisdiction of the courts in New South Wales.
6.6	The Contractor 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, the Contractor accepts no responsibility for any loss or damage incurred by the Client resulting from these inaccurate plans, specifications or other information.	12.8			22.4	whichever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
6.7	The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and are of suitable capacity to handle the Materials once installed. If for	12.9			22.5	The Contractor may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
					22.6	The Client cannot assign or licence without the written approval of the Contractor.
					22.7	The Contractor may elect to subcontract out any part of the Works 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 the Contractor's sub-contractors without the authority of the Contractor.
					22.8	The Client agrees that the Contractor may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to have been made from the time when the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Contractor to provide Works to the Client.
					22.9	Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other events beyond the control of either party.
					23.1	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.