

Definitions and Interpretations

- 1.1 "**Contract**" means the terms and conditions contained herein, together with any residential quotation, invoice or other document or amendments expressed to be supplemental to this *Contract*.
- 1.2 "**Contractor**" shall mean Honest Painting Pty Ltd.
- 1.3 "**Owner**" means the person/s, entities or any person acting on behalf of and with the authority of the *Owner* requesting the *Contractor* to provide the *Works* as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one *Owner*, is a reference to each *Owner* jointly and severally; and
 - (b) if the *Owner* is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the *Owner* is a part of a *Trust*, shall be bound in their capacity as a trustee; and
 - (d) includes the *Owner's* executors, administrators, successors and permitted assigns.
- 1.4 "**Works**" shall mean the *Works* as described in the Description of *Works* in this *Contract*. Where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for each other.
- 1.5 "**Materials**" shall mean *Materials* supplied by the *Contractor* that are required in order complete the *Works*.
- 1.6 "**Intended Use**" means a building product and the use thereof, for which the building product is intended to be, or is reasonably likely to be, associated with a building.
- 1.7 "**Non-Conforming Building Product**" means building products that are regarded as *Non-Conforming* for an *Intended Use* if, when associated with a building:
 - (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.8 "**Personal Information**" means name, address, telephone number, 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).
- 1.9 "**Worksite**" shall mean the land (or that part of the land) that the *Contractor* reasonably needs to occupy in order to carry out and practically complete the *Works* required under this *Contract*.
- 1.10 "**Prime Cost Item**" shall mean an item that either has not been selected, or whose price is not known, at the time this *Contract* is entered into and for the cost of supply and delivery of which the *Contractor* must make a reasonable allowance in the *Contract*. (Applicable only if appendix attached).
- 1.11 "**Provisional Sum**" shall mean an estimate of the cost of carrying out particular *Works* under this *Contract* for which the *Contractor*, after making all reasonable inquiries, cannot give a definite price at the time this *Contract* is entered into.
- 1.12 "**Contract Price**" shall mean the price of the *Works* (including any GST where applicable) as agreed between the *Contractor* and the *Owner*.
- 1.13 "**GST**" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Errors and Omissions

- 2.1 The *Owner* acknowledges and accepts that the *Contractor* 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 the *Contractor* 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 the *Contractor* in respect of the *Works*.
- 2.2 In the event such an error and/or omission occurs in accordance with clause 2.1, and is not attributable to the negligence and/or wilful misconduct of the *Contractor*, the *Owner* shall not be entitled to treat this *Contract* as repudiated nor render it invalid.

3. Variations

- 3.1 In the event that the *Owner* requests a variation the *Contractor* will give the *Owner* a written variation document detailing the *Works*, the amended *Contract Price*, the estimated time to undertake the variation, the likely delay to the completion date if any, and shall require written acceptance by the *Owner* of the variation before commencing *Works* on the variation.

- 3.2 In the event that the *Contractor* requests a variation, the *Contractor* will, in writing state the reason for the variation, provide a full description of the variation, state any effect the variation will have on the *Contract*, including but not limited to, the *Contract Price*, completion date and whether further permits or authorisations are required, and shall require written acceptance by the *Owner* of the variation before commencing on the variation.
- 3.3 All variations to this *Contract* (including those to the plans and specifications) must be in writing, dated and signed by both parties to the *Contract*.
- 3.4 All variations under this clause shall include an allowance for *Contractor's* overheads and profit.

4. Contract Price and Payment

- 4.1 Time for payment for the *Works* shall be of the essence and will be stated on the progress payment or invoice. If no time is stated then payment shall be due seven (7) days following the date of the progress payment or invoice.
- 4.2 Any deposit shall be payable on the day that this *Contract* is signed by the *Owner*.
- 4.3 The *Owner* shall make progress payments (within five (5) days of receipt from the *Contractor* in writing of a progress claim) for each completed stage of the *Works* as stated in this *Contract*. Such payments shall include any amounts payable for *Contract Price* adjustments or variations claimed and not paid prior to each progress payment. (Applicable only if appendix attached).
- 4.4 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the *Owner* and the *Contractor*.
- 4.5 The *Contract Price* shall be increased by the amount of any *GST* and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in this *Contract*.

5. Provision of the Works

- 5.1 The *Contractor* will endeavour to commence the *Works* on the commencement date specified in this *Contract* and to complete the *Works* within the completion period stated in this *Contract*, subject to clause 5.2.
- 5.2 At the sole discretion of the *Contractor* the *Works* commencement date will be put back and/or the building period extended by whatever time is reasonable in the event that the *Contractor* claims an extension of time by giving the *Owner* notice, (such written notice to include the reasons and requested length of the extension) where completion is delayed by an event beyond the *Contractor's* control, including but not limited to, delays caused or requested by the *Owner*, inclement weather or conditions, variations, industrial disputes, unavailability of materials, relocation of hidden services such as electrical or plumbing or any delays caused by the failure to obtain the necessary approvals as per clause 8.1(b).
- 5.3 Unless the *Owner* notifies the *Contractor* in writing within five (5) business days of the date of the *Contractor's* notice that it objects to the delay, the *Contract* shall be extended by the time notified by the *Contractor*.
- 5.4 The *Works* shall be deemed to be practically completed when the *Works* carried out under this *Contract* have been completed in accordance with the plans and specifications set out in this *Contract*, and can be used by the *Owner* for their intended purpose, are free of major defects, and all other statutory requirements have been met. The *Contractor* shall advise the date of practical completion to the *Owner* in writing.
- 5.5 The *Contractor* shall not be liable for any costs incurred by the *Owner* due to any unforeseen delays in completing the *Works*.

6. Defects

- 6.1 The *Contractor* shall rectify (at the *Contractor's* own expense) any defects or omissions in the *Works* that have become apparent within four (2) weeks of the date that the *Owner* is advised that the *Works* have been completed, provided that the *Owner* has notified the *Contractor* in writing of any such defects or omissions no later than five (5) business days after the expiry of that four (2) week period.
- 6.2 The *Contractor* shall remedy any defects brought to the *Contractor's* attention under clause 6.1 within thirty (30) days of receiving such notification in writing.

7. Owner's Responsibilities

- 8. Where the *Owner* has supplied products for the *Contractor* to complete the *Works*, the *Owner* 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 the *Contractor's* opinion, it is believed that the materials supplied are *Non-Conforming* products and will not conform with the state regulations, then the *Contractor* shall be entitled, without prejudice, to halt the *Works* 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 3.2.

- 8.1 It is the intention of the *Contractor* and agreed by the *Owner* that:
- (a) any building/construction sites will comply with all work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation; and
 - (b) the *Owner* shall obtain and pay for all planning and building approvals required for the *Works* prior to commencement of the *Works* by the *Contractor* unless otherwise agreed in writing between the *Owner* and the *Contractor*. In the event that the *Contractor* agrees to obtain the approvals then the cost of those approvals shall be the *Owner's* responsibility and shall be in addition to the *Contract Price*.
 - (c) it is the responsibility of the *Owner* to:
 - (i) provide and have erected scaffolding to enable the *Works* to be undertaken (where in the *Contractor's* opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed; and
 - (ii) remove (or provide adequate dustsheets to protect the *Owner's*) furniture, furnishings or personal goods from the vicinity of the *Works* and agrees that the *Contractor* shall not be liable for any damage attributed to dust or damage caused by any sanding process through the *Owner's* failure to comply with this clause. Flaking or crumbling walls should be temporarily covered by the *Owner*, until the coatings are dry; and
 - (iii) ensure that full and final lighting as designed for the completed project is fully operational prior to sanding *Works* commencing, and are made available for use at no cost for the duration of the project. Any costs incurred by the *Contractor* will be invoiced to the *Owner* should this requirement not be met.
- 8.2 In the event asbestos or any other toxic substances (such as mould or rot) are discovered at the *Worksite*, that it is the *Owner's* responsibility to ensure the safe removal of the same. The *Owner* further agrees to indemnify the *Contractor* against any costs incurred by the *Contractor* as a consequence of such discovery. Under no circumstances will the *Contractor* handle removal of asbestos product.
- 8.3 It is the *Contractor's* recommendation that:
- (a) it is in the *Owner's* best interest that the *Owner* vacates the premises both during the course of the *Works* and during the drying period due to the fumes generated from the solvent based polyurethane coatings which are toxic when the paint is wet; and
 - (b) all foodstuffs, fabric, leather and any other 'porus' materials that are in close proximity of the walls being coated be removed.
- 8.4 The *Owner* acknowledges and agrees that all costs associated with accommodation during this time, are the sole responsibility of the *Owner*.

9. Worksite Access and Condition

- 9.1 The *Owner* shall ensure that the *Contractor* has clear and free access to the *Worksite* at all times to enable them to undertake the *Works* (including carrying out *Worksite* inspections, gain signatures for required documents, and for the delivery and installation of the *Materials*); and
- (a) the *Contractor* shall not be liable for any loss or damage to the *Worksite* (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas etc.) unless due to the *Contractor's* negligence; and
 - (b) if the *Works* are interrupted by the failure of the *Owner* to adhere to the work schedule agreed to between the *Contractor* and the *Owner*, any additional costs will be invoiced to the *Owner* as a variation in accordance with clause 3.
- 9.2 It is the intention of the *Contractor* and agreed by the *Owner* that it is the responsibility if the *Owner* to:
- (a) remove from the work area any furniture, personal effects or other property likely to impede the *Contractor* in order to minimise the risk of injury or any damage; and
 - (b) provide the *Contractor*, while at the *Worksite*, with adequate access to available water, electricity, toilet and washing facilities.
- 9.3 The *Owner* agrees to be present at the *Worksite* when and as reasonably requested by the *Contractor* and its employees, contractors and/or agents.
- 9.4 Where the *Contractor* requires that *Materials*, tools etc. required for the *Works* be stored at the *Worksite*, the *Owner* shall supply the *Contractor* a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the *Owner's* responsibility.
- 9.5 *Worksite* Inductions:
- (a) in the event the *Owner* requires an employee or sub-contractor of the *Contractor* to undertake a *Worksite* induction during working hours, the *Owner* 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 *Owner* shall be liable to pay the *Contractor's* standard (and/or overtime, if applicable) hourly labour rate; or

(b) where the Contractor is in control of the Worksite, the Owner and/or the Owner's third party contractors must initially carry out the Contractor's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by **appointment only** and unless otherwise agreed, in such an event the Owner and/or third party acting on behalf of the Owner must at all times be accompanied by the Contractor.

10. Contractor's Responsibilities

10.1 The Contractor shall make good (at the Contractor's own expense) any loss or damage to the Works or property of the Owner caused by the negligence of the Contractor.

11. Risk

11.1 If the Contractor retains ownership of the Materials nonetheless, all risk for the Materials passes to the Owner on completion of the Works.

11.2 The Owner warrants those structures to which the Materials are to be affixed are able to withstand the installation thereof and are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, wood rot, mould etc) that the Contractor, or the Contractor's employees, reasonably form the opinion that the Owner's premises is not safe for the Works to proceed then the Contractor shall be entitled to delay the provision of the Works (in accordance with the provisions of clause 5 above) until the Contractor is satisfied that it is safe for the installation to proceed.

11.3 Where the Owner has provided instructions or specifications for the Contractor to complete the Works (including, but not limited to, any requested variation to the original design and/or paint colour selection), then the Contractor shall may require proof of concept sign off prior to commencement of the Works and will accept no liability whatsoever for the finished Works being deemed as unsatisfactory to the Owner should the Owner fail to adhere to this clause.

11.4 The Owner acknowledges and accepts that:

- (a) the Contractor shall be indemnified for any claims made where colour fade occurs due to paint colours chosen by the Owner that have less than a forty percent (40%) light-reflectance value (LRV) as these are inclined to fade more readily than those colours with a greater LRV; and
- (b) any faults with underlying surfaces or structures may affect the finish of the completed Works; and
- (c) where the Contractor has been requested to perform remedial work on damaged structures, evidence of repairs may be apparent after the completion of the Works; and
- (d) Materials supplied may:
 - (i) exhibit variations in shade, colour, texture, surface and finish, and
 - (ii) mark or stain if exposed to certain substances; and
 - (iii) be damaged or disfigured by impact or scratching.

11.5 The Contractor shall endeavour to match old for new, however, the Owner acknowledges and accepts that colours may not match due to differences in colour matching/mixing technologies, fading and/or weathering of the sample provided to colour match from. Therefore, the Contractor shall not be held responsible or liable for any differences that may result.

11.6 The Contractor:

- (a) offers no guarantee against the following defects or damage that may occur naturally in the Works over time:
 - (i) cracking of paint over plaster where the wrong paints are used for coating; or
 - (ii) delaminating of the plaster caused by hygroscopic movement or dampness in the substrate; or
 - (iii) damage caused by contact with chemicals, solvents, oils or any other substances; or
 - (iv) the occurrence of efflorescence and any detrimental effects this has on the appearance of the Works; or
 - (v) peeling or flaking caused by the environment or other external factors.
- (b) shall not be liable whatsoever for:
 - (i) any pre-existing damages discovered by the Contractor prior to the commencement of the Works. The Owner will be notified of any such discovery in writing; or
 - (ii) inferior existing paintwork where the Contractor's paint has bonded to the existing paintwork and weakened the previous paint causing any kind of flake, crack, blemish, blistering or delamination; or
 - (iii) the quality of the Works if the Owner does not follow the Contractor's recommendations as to the number of coats of paint required to obtain the final finish if the Owner chooses to accept a reduced Price based on fewer coats of paint; or
 - (iv) any loss or damage to the Works (including, but not limited to, painted/plastered surfaces) that is caused by any other tradesmen during and after the completion of the Works.

(c) is not insured to remove furniture or fittings and will not do so, nor is the *Contractor* licensed to move appliances.

If the *Owner* instructs the *Contractor* to rectify any damage caused by any other tradesman, this will become a variation to the original quotation and will be charged at the *Contractor's* normal hourly rate. The hourly rate is \$70 plus GST \$7.

12. Underground Locations

12.1 Prior to the *Contractor* commencing the *Works* the *Owner* must advise the *Contractor* of the precise location of all underground services on the *Worksite* and clearly mark the same. The underground mains and services the *Owner* must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the *Worksite*.

12.2 Whilst the *Contractor* will take all care to avoid damage to any underground services the *Owner* agrees to indemnify the *Contractor* in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.

13. Materials, Documents and Works Supplied by the Owner

13.1 The *Owner*:

- (a) warrants that any documentation supplied for the *Works* and the content or methods therein are accurate and/or suitable to be used for the purpose for which the document/s were created;
- (b) agrees that it is reasonable for the *Contractor* to rely on the documentation;
- (c) agrees to supply the *Contractor* with as many copies of the documentation as the *Contractor* may reasonably need to perform the *Works* or to obtain any necessary approvals required for the *Works*.

13.2 The *Owner* agrees that all materials and works supplied by the *Owner* or the *Owner's* third-party sub-contractors will:

- (a) be performed or supplied in accordance with all legislative requirements (including, but not limited to, the Building Products (Safety) Act 2017 and Work Health and Safety legislation);
- (b) be suitable for their inclusion into the *Works*;
- (c) be completed to the *Contractor's* requirements.

13.3 The *Contractor* may, where the *Contractor* believes that any materials or works supplied by the *Owner* or any third party employed by the *Owner* are defective, require that the defective materials be replaced or require such works as are considered defective to be removed, repaired or replaced, the costs of which shall be the *Owner's* responsibility.

13.4 Notwithstanding clause 13.3 the *Contractor* shall have no liability whatsoever in terms of the performance of, or suitability of, any materials or works supplied by either the *Owner* or any third party employee of the *Owner*.

13.5 In the event that the *Owner* undertakes or employs any third party to undertake any works at the *Worksite* whilst the *Contractor* is undertaking *Works* then the *Owner* must ensure that the *Owner* and/or any third party so employed:

- (a) is appropriately licensed for the works being undertaken, and will provide evidence of the same upon request by the *Contractor*;
- (b) does not interfere with the progress of *Works* by the *Contractor*;
- (c) holds all relevant insurances as the *Contractor* is required to hold or as are otherwise required under this *Contract*;
- (d) co-operates with all requests or directives of the *Contractor* in relation to the timeliness and co-ordination of works to be performed;
- (e) co-operates as may be reasonably expected with all other persons on the *Worksite*;
- (f) discusses any *Worksite* issues directly with the *Contractor* and not with any of the *Contractor's* employees.

13.6 In the event that the *Owner* or the *Owner's* third party employees do not comply with clauses 13.3 or 13.5 then the *Contractor* may require the non-compliant party to either leave and/or stay off the *Worksite* as the *Contractor* may so direct.

13.7 If the *Owner* breaches this clause then the *Contractor* may (at the *Contractor's* sole discretion) either:

- (a) carry on the *Works* without incorporation of any *Owner* supplied materials or works;
- (b) suspend the carrying out of the *Works* as per clause 5.2;
- (c) terminate this *Contract* in accordance with clause 20.

14. Title

14.1 It is the intention of the *Contractor* and agreed by the *Owner* that ownership of *Materials* shall not pass until:

- (a) the *Owner* has paid all amounts owing for the particular *Materials*; and
- (b) the *Owner* has met all other obligations due by the *Owner* to the *Contractor* in respect of all contracts between the *Contractor* and the *Owner*.

14.2 Receipt by the *Contractor* of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the *Contractor's* ownership or rights in respect of *Materials*, and this *Contract*, shall continue.

14.3 It is further agreed that:

- (a) until such time as ownership of the *Materials* shall pass from the *Contractor* to the *Owner* the *Contractor* may give notice in writing to the *Owner* to return the *Materials* or any of them to the *Contractor*. Upon such notice the rights of the *Owner* to obtain ownership or any other interest in the *Materials* shall cease;
- (b) the *Contractor* shall have the right of stopping the *Materials* in transit whether or not delivery has been made; and
- (c) if the *Owner* fails to return the *Materials* to the *Contractor* then the *Contractor* or the *Contractor's* agent may as the invitee of the *Owner* enter upon and into land and premises owned, occupied or used by the *Owner*, or any premises where the *Materials* are situated and take possession of the *Materials*.

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

15.1 In this clause:

- (a) financing statement has the meaning given to it by the PPSA;
- (b) financing change statement has the meaning given to it by the PPSA;
- (c) security agreement means the security agreement under the PPSA created between the *Owner* and the *Contractor* by these terms and conditions; and
- (d) security interest has the meaning given to it by the PPSA.

15.2 Upon assenting to these terms and conditions in writing the *Owner* 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 *Materials* previously supplied (if any), and that will be supplied in the future, by the *Contractor* to the *Owner*;
- (b) any monetary obligations owed by the *Owner* to the *Contractor* for the provision of the *Works*.

15.3 The *Owner* 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 the *Contractor* 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 15.3(a)(i) or 15.3(a)(ii).
- (b) indemnify, and upon demand reimburse, the *Contractor* 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 registration made thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of the *Contractor*;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the *Materials* and/or *Works* in favour of a third party without the prior written consent of the *Contractor*; and
- (e) immediately advise the *Contractor* of any material change in its business practices of selling the *Materials* which would result in a change in the nature of proceeds derived from such sales.

15.4 The *Contractor* and the *Owner* agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

15.5 The *Owner* hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

15.6 The *Owner* waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

15.7 Unless otherwise agreed to in writing by the *Contractor*, the *Owner* waives its right to receive a verification statement in accordance with section 157 of the PPSA.

15.8 The *Owner* shall unconditionally ratify any actions taken by the *Contractor* under clauses 15.3 to 15.5.

15.9 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

16. Charge on Land

- 16.1 The *Owner* hereby agrees to mortgage and/or charge all of the *Owner's* joint and/or several interest in the land where the *Works* are to take place to the *Contractor* or the *Contractor's* nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The *Owner* acknowledges and agrees that the *Contractor* (or the *Contractor's* nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- 16.2 Clause 16.1 shall only be applicable where the charge is created to secure the payment to the *Contractor* by the *Owner* of monies due under the *Contract* where a court or a tribunal has made an order or judgement that such payment be made.

17. Intellectual Property

- 17.1 Where the *Contractor* has designed, drawn or written plans or a schedule of *Works* for the *Owner*, then the copyright in those plans, schedules, designs and drawings shall remain vested in the *Contractor*, and shall only be used by the *Owner* at the *Contractor's* discretion.
- 17.2 The *Owner* warrants that all designs or instructions provided to the *Contractor* will not cause the *Contractor* to infringe any patent, registered design or trademark in the execution of the *Owner's* order.

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 2.5% per calendar month (and at the *Contractor's* sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the *Owner* owes the *Contractor* any money the *Owner* shall indemnify the *Contractor* from and against all costs and disbursements incurred by the *Contractor* in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the *Contractor's* contract default fees, and bank dishonour fees).
- 18.3 Further to any other rights or remedies the *Contractor* may have under this *Contract*, if the *Owner* has made payment to the *Contractor*, and the transaction is subsequently reversed or cancelled, the *Owner* shall be liable for the amount of the reversed or cancelled transaction, in addition to any further costs incurred by the *Contractor* under this clause 18, where it can be proven that such reversal or cancellation is found to be illegal, fraudulent or in contravention to the *Owner's* obligations under this *Contract*.
- 18.4 Without prejudice to any other remedies the *Contractor* may have, if at any time the *Owner* is in breach of any obligation (including those relating to payment) under these terms and conditions the *Contractor* may suspend or terminate the provision of *Works* to the *Owner*. The *Contractor* will not be liable to the *Owner* for any loss or damage the *Owner* suffers because the *Contractor* has exercised its rights under this clause.

19. Privacy Policy

- 19.1 All emails, documents, images or other recorded information held or used by the *Contractor* is *Personal Information*, as defined and referred to in clause 19.3, and therefore considered *Confidential Information*. The *Contractor* 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 IIIIC 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"). The *Contractor* acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the *Owner's Personal Information*, held by the *Contractor* that may result in serious harm to the *Owner*, the *Contractor* will notify the *Owner* 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 *Owner* by written consent, unless subject to an operation of law.
- 19.2 Notwithstanding clause 19.1, privacy limitations will extend to the *Contractor* in respect of cookies where the *Owner* utilises the *Contractor's* website to make enquiries. The *Contractor* 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 *Owner's*:
 - (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the *Contractor* when the *Contractor* sends an email to the *Owner*, so the *Contractor* may collect and review that information ("collectively *Personal Information*")

If the *Owner* consents to the *Contractor's* use of cookies on the *Contractor's* website and later wishes to withdraw that consent, the *Owner* may manage and control the *Contractor's* privacy controls via the *Owner's* web browser, including removing cookies by deleting them from the browser history when exiting the site.

- 19.3 The *Owner* 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, 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 *Owner* in relation to credit provided by the *Contractor*.
- 19.4 The *Owner* agrees that the *Contractor* may exchange information about the *Owner* with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the *Owner*; and/or
 - (b) to notify other credit providers of a default by the *Owner*; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the *Owner* is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the *Owner* including the *Owner's* repayment history in the preceding two (2) years.
- 19.5 The *Owner* consents to the *Contractor* being given a consumer credit report to collect overdue payment on commercial credit.
- 19.6 The *Owner* 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):
- (a) the provision of *Works*; and/or
 - (b) analysing, verifying and/or checking the *Owner's* credit, payment and/or status in relation to the provision of *Works*; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the *Owner*; and/or
 - (d) enabling the collection of amounts outstanding in relation to the *Works*.
- 19.7 The *Contractor* may give information about the *Owner* 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 *Owner* including credit history.
- 19.8 The information given to the CRB may include:
- (a) *Personal Information* as outlined in 19.3 above;
 - (b) name of the credit provider and that the *Contractor* is a current credit provider to the *Owner*;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the *Owner'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, 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 *Owner* 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);
 - (g) information that, in the opinion of the *Contractor*, the *Owner* has committed a serious credit infringement;
 - (h) advice that the amount of the *Owner's* overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.9 The *Owner* shall have the right to request (by e-mail) from the *Contractor*:
- (a) a copy of the *Personal Information* about the *Owner* retained by the *Contractor* and the right to request that the *Contractor* correct any incorrect *Personal Information*;
 - and
 - (b) that the *Contractor* does not disclose any *Personal Information* about the *Owner* for the purpose of direct marketing.
- 19.10 The *Contractor* will destroy *Personal Information* upon the *Owner'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.
- 19.11 The *Owner* 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 *Owner* is not satisfied with the resolution provided, the *Owner* can make a complaint to the Information Commissioner at www.oaic.gov.au.

20. Cancellation

- 20.1 The *Contractor* may cancel this *Contract* (Subject to clause 20.2) if the *Owner*:
- (a) fails to make payment due under this *Contract*; or
 - (b) denies the *Contractor* access to the *Worksite* to complete or undertake any *Works*; or
 - (c) become insolvent, goes into liquidation or administration.
- 20.2 Where the *Contractor* believes that the defaults in clause 20.1 can be rectified then the *Contractor* shall advise the *Owner* in writing that they have five (5) working days (from the date of the letter) in which to do so. If the *Owner* fails to rectify any default within that period then the *Contractor* shall advise the *Owner* in writing that they are cancelling the *Contract*.
- 20.3 If the *Contract* is ended under this clause, the *Contractor* shall be entitled to a reasonable amount for the *Works* carried out under this *Contract* to the date the *Contract* is ended (including the cost of any *Materials* delivered to the *Worksite* or already ordered from suppliers but not yet paid for by the *Owner*).

21. Warranty

- 21.1 The *Contractor* warrants that:
- (a) the *Works* will be performed in a proper and workmanlike manner and in accordance with the plans and specifications set out in the *Contract*;
 - (b) all *Materials* supplied by the *Contractor* will be good and suitable for the purpose for which they are used and unless otherwise stated in the *Contract*;
 - (c) the *Works* will be done with due diligence and within the time stipulated in the *Contract*, or if no time is stipulated within a reasonable time;
 - (d) if the *Works* consist of the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the *Works* will result, to the extent of the *Works* conducted, in a dwelling that is reasonably fit for occupation as a dwelling;
 - (e) the *Works* and any *Materials* used in providing the *Works* will be reasonably fit for the specified purpose or result, if the *Owner* expressly makes known to the holder of the *Contractor* licence or person required to hold a *Contractor* licence, or another person with express or apparent authority to enter into or vary contractual arrangements on behalf of the holder or person, the particular purpose for which the *Works* is required or result that the *Owner* desires the *Works* to achieve, so as to show that the *Owner* relies on the holder's or person's skill and judgment.
- 21.2 Claims in regards to statutory warranties must be made within six (6) years for structural *Works* or within two (2) years for non-structural *Works* both periods commencing from the date the *Works* have been completed in accordance with clause 5.4 herein. The time periods specified in this clause shall be extended for an additional six (6) months in the event that a homeowner or subsequent purchaser becomes aware of a defect within the last six (6) months of the time periods specified.
- 21.3 The *Contractor* also warrants that all *Works* done under this *Contract* will comply with:
- (a) the Building Code of Australia and carried out in accordance with all relevant laws and legal requirements (to the extent required under the Environmental Planning and Assessment Act 1979, including any regulation or other instrument made under that Act, the Electricity (Consumer Safety) Act 2004, and the Plumbing and Drainage Act 2011); and
 - (b) all other relevant codes, standards and specifications that the *Works* are required to comply with under any law; and
 - (c) the conditions of any relevant development consent or complying development certificate.
- 21.4 Despite clause 21.3, this *Contract* may limit the liability of the *Contractor* for a failure to comply with clause 21.3 if the failure solely relates to:
- (a) a design or specification prepared by or on behalf of the *Owner* (but not by or on behalf of the *Contractor*); or
 - (b) a design or specification required by the *Owner*, if the *Contractor* has advised the *Owner* in writing that the design or specification contravenes clause 21.3.
- 21.5 For *Materials* not manufactured by the *Contractor* the warranty shall be the current warranty provided by the manufacturer of the *Materials*. The *Contractor* shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.

22. Surplus Materials

- 22.1 Unless otherwise stated elsewhere in this *Contract*:
- (a) demolished materials remain the *Owner's* property; and
 - (b) *Materials* which the *Contractor* brings to the *Worksite* which are surplus remain the property of the *Contractor*.

23. Disputes

- 23.1 If the *Owner* or *Contractor* believes a dispute has arisen in relation to any matter under this *Contract*, then that party must promptly give the other party written notice setting out the matter in dispute.
- 23.2 Both parties shall meet within fourteen (14) days of the giving of such notice to attempt to resolve the dispute.
- 23.3 In the event that the dispute cannot be resolved then the matter shall be referred to the Office of Fair Trading for assistance in the resolution of the dispute.

24. The Commonwealth Competition and Consumer Act 2010, Home Building Act 1989, Home Building Regulations 2004, and Fair Trading Acts

24.1 Nothing in this *Contract* is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Competition and Consumer Act 2010, Home Building Act 1989, Environmental Planning and Assessment Act 1979, Home Building Regulations 2004, and Fair Trading Acts in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.

25. Service of Notices

- 25.1 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 current email address.
- 25.2 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.

26. Trusts

- 26.1 If the *Owner* at any time upon or subsequent to entering in to the *Contract* is acting in the capacity of trustee of any trust ("*Trust*") then whether or not the *Contractor* may have notice of the *Trust*, the *Owner* covenants with the *Contractor* as follows:
 - (a) the *Contract* extends to all rights of indemnity which the *Owner* now or subsequently may have against the *Trust* and the trust fund;
 - (b) the *Owner* has full and complete power and authority under the *Trust* 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 *Owner* against the *Trust* or the trust fund. The *Owner* 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 *Owner* will not without consent in writing of the *Contractor* (the *Contractor* will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the *Owner* 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 property.

27. General

- 27.1 Both parties acknowledge and agree:
 - (a) to comply with the National Construction Code (NCC) and the Building Products (Safety) Act 2017, in respect of all workmanship and building products to be supplied during the course of the *Works*; and
 - (b) that *Works* will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 27.2 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.
- 27.3 If any provisions of this *Contract* are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.

- 27.4 This *Contract* shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 27.5 The *Contractor* shall be under no liability whatever to the *Owner* for any indirect loss and/or expense (including loss of profit) suffered by the *Owner* arising out of a breach by the *Contractor* of this *Contract*.
- 27.6 Subject to clause 21, in the event of any breach of this *Contract* by the *Contractor*, the remedies of the *Owner* shall be limited to damages. Under no circumstances shall the liability of the *Contractor* exceed the *Contract Price*.
- 27.7 Unless otherwise provided in writing the *Owner* shall not be entitled to set off against or deduct from the *Contract Price* any sums owed or claimed to be owed to the *Owner* by the *Contractor*.
- 27.8 None of the *Contractor's* agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the *Contractor* in writing nor is the *Contractor* bound by any such unauthorised statements.
- 27.9 The *Contractor* may licence and/or assign all or any part of its rights and/or obligations under this *Contract* without the *Owner's* consent.
- 27.10 The *Owner* cannot licence or assign without the written approval of the *Contractor*.
- 27.11 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 *Owner* 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*.
- 27.12 Neither party shall be liable for any default due to any act of God, war, terrorism, fire, flood, storm or other event beyond the reasonable control of either party.
- This *Contract*, the plans and specifications have precedence in that order if there is any inconsistency between them