St Clair Sheetmetal – Terms & Conditions of Trade

1. Definitions

1.1 "Supplier" means St Clair Group Pty Ltd T/A St Clair Sheetmetal, its successors and assigns or any person acting on behalf of and with the authority of St Clair Group Pty Ltd T/A St Clair Sheetmetal.

1.2 "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.

1.3 "Works" means all Works or Materials supplied by the Supplier 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).

1.4 "Price" means the Price payable for the Works as agreed between the Supplier and the Client in accordance with clause 5 below.

2. Acceptance

2.1 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.

2.2 These terms and conditions may only be amended with the Supplier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Supplier.

3. Electronic Transactions (Queensland) Act 2001

3.1 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.

4. Change in Control

4.1 The Client shall give the Supplier 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, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.

5. Price and Payment

5.1 At the Supplier's sole discretion the Price shall be either:

(a) as indicated on invoices provided by the Supplier to the Client in respect of Works performed or Materials supplied; or

(b) the Supplier's quoted Price (subject to clause 5.2) which shall be binding upon the Supplier provided that the Client shall accept the Supplier's quotation in writing within thirty (30) days. Such quotations shall not include electrical or plumbing work in the Price, nor shall the Supplier engage other tradesmen unless specifically stated in the quotation at the Client's request.

5.2 The Supplier reserves the right to change the Price:

(a) if a variation to the Materials which are to be supplied is requested; or

(b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or

(c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations or changes to accessing the site or site conditions, availability of machinery, safety considerations, prerequisite work by a third party not being completed, change of design, hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Works; or

(d) in the event of increases to the Supplier 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 Supplier's control.

5.3 At the Supplier's sole discretion a deposit may be required. For non-account holders the deposit amount shall be forty percent (40%) of the Price and shall become immediately due and payable on acceptance of a quotation or placement of an order. Where delivery/installation is included in the Price, a further 40% of the Price shall become immediately due and payable prior to delivery/installation, and the balance of 20% of the Price shall be payable immediately on completion of the works. Where delivery/installation is NOT included, the deposit amount shall be forty percent (40%) of the Price and shall become immediately due and payable on acceptance of a quotation or placement of an order, and the balance of 60% of the Price shall be payable in full at time of collection of the Works from the Supplier's premises.

5.4 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 Supplier, which notwithstanding Clause 5.3 above, may be:

(a) on completion of the Works; or

(b) prior to commencement of the Works; or

(c) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;

(d) the date specified on any invoice or other form as being the date for payment; or

(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.

5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to one and a half percent (1.5%) of the Price), or by any other method as agreed to between the Client and the Supplier.

5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the 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.

6. Delivery of the Works

6.1 Subject to clause 6.2 it is the Supplier's responsibility to ensure that the Works start as soon as it is reasonably possible.

6.2 The Works commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Supplier claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Supplier'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 Works; or

(c) notify the Supplier that the site is ready.

6.3 At the Supplier's sole discretion the cost of delivery is included in the Price for all installation Works unless otherwise stated on quotations or invoices.

6.4 Any time or date given by the Supplier to the Client is an estimate only. The Supplier shall not be liable for any loss or damage whatsoever due to failure by the Supplier to deliver the Works (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of the Supplier.

7. Risk

7.1 If the Supplier retains ownership of the Materials under clause 12 then:

(a) where the Supplier is supplying Materials only, 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;

(i) the Client or the Client's nominated carrier takes possession of the Materials at the Supplier's address; or

(ii) the Materials are delivered by the Supplier or the Supplier's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).

(b) where the Supplier is to both supply and install Materials then the Supplier shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.

7.2 Notwithstanding the provisions of clause 7.1 if the Client specifically requests the Supplier to leave Materials outside the Supplier's premises for collection or to deliver the Materials to an unattended location then such materials shall always 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 at the Client's expense.

7.3 The Supplier 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 Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

7.4 Where the Client is to supply the Supplier with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. The Supplier shall not be liable whatsoever for any errors in the Materials that are caused by incorrect or inaccurate data being supplied by the Client.

7.5 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 any reason (including the discovery of asbestos, or dangerous access to installation sites) that the Supplier, or employees of the Supplier, reasonably form the opinion that the Client's premises is not safe for the installation of Materials to proceed then the Supplier shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 6.2 above) until the Supplier is satisfied that it is safe for the installation to proceed.

7.6 The Client acknowledges that Materials supplied may exhibit variations in shade tone, colour, texture, surface and finish, and may fade or change colour over time. The Supplier will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.

7.7 The Client acknowledges that Materials supplied may:

(a) fade or change colour over time; and

(b) expand, contract or distort as a result of exposure to heat, cold, weather; and

(c) mark or stain if exposed to certain substances; and

(d) be damaged or disfigured by impact or scratching.

8. Specifications

8.1 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in the Supplier's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Supplier.

9. Other Tradesmen

9.1 It shall be the Client's responsibility to arrange for all other licenced tradesmen as required (including Electrician, Plumbers, Gas Fitters) unless otherwise agreed between the Supplier and the Client at that time of the quotation.

9.2 The Supplier shall not be liable for any claim for losses, damages or costs arising from defective work or materials provided by other tradesmen. It shall be the Client's responsibility to ensure the work of other tradesmen installing the Materials provided by the Supplier or other interactive and/or supportive components as per the manufacturer's instructions or recommendations.

10. Access

10.1 The Client shall ensure that the Supplier has clear and free access to the work site at all times to enable them to deliver and/or install the Materials. The Supplier 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 the Supplier.

11. Compliance with Laws

11.1 The Client and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.

11.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.

11.3 The Client agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

12. Title

12.1 The Supplier and the Client agree that ownership of the Materials shall not pass until:

(a) the Client has paid the Supplier all amounts owing to the Supplier; and

(b) the Client has met all of its other obligations to the Supplier.

12.2 Receipt by the Supplier 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.

12.3 It is further agreed that:

(a) until ownership of the Materials passes to the Client in accordance with clause 12.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Supplier on request.

(b) the Client holds the benefit of the Client's insurance of the Materials on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.

(c) the production of these terms and conditions by the Supplier shall be sufficient evidence of the Supplier's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Supplier to make further enquiries.

(d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.

(e) the Client should not convert or process the Materials 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 the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.

(f) unless the Materials have become fixtures the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Materials are kept and recover possession of the Materials.

(g) the Supplier may recover possession of any Materials in transit whether or not delivery has occurred.

(h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Supplier.

(i) the Supplier may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

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

13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

13.2 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 all Materials and/or collateral (account) – being a monetary obligation of the Client to the Supplier for Works – that have previously been supplied and that will be supplied in the future by the Supplier to the Client.

13.3 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 the Supplier 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 13.2(a)(i) or 13.2(a)(ii);

(b) indemnify, and upon demand reimburse, the Supplier 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 Materials charged thereby;

(c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of the Supplier;

(e) immediately advise the Supplier 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.

13.4 The Supplier 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.

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

13.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

13.7 Unless otherwise agreed to in writing by the Supplier, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.

13.8 The Client shall unconditionally ratify any actions taken by the Supplier under clauses 13.2 to 13.5.

13.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Security and Charge

14.1 In consideration of the Supplier agreeing to supply the Materials, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

14.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.

14.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.

15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

15.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works within fourteen (14) days with a particularised claim after any such defect becomes evident. Upon such notification the Client must allow the Supplier to inspect the Materials or to review the Works provided.

15.2 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**).

15.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.

15.5 If the Client is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.

15.6 If the Supplier is required to replace any Materials under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Client has paid for the Materials.

15.7 If the Supplier is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then the Supplier may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.

15.8 If the Client is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Materials is:

(a) limited to the value of any express warranty or warranty card provided to the Client by the Supplier at the Supplier's sole discretion;

(b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Materials;

(c) otherwise negated absolutely.

15.9 Subject to this clause 15, returns will only be accepted provided that:

(a) the Client has complied with the provisions of clause 15.1; and

(b) the Supplier has agreed that the Materials are defective; and

(c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and

(d) the Materials are returned in as close a condition to that in which they were delivered as is possible.

15.10 Notwithstanding clauses 15.1 to 15.9 but subject to the CCA, the Supplier 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 Materials;

(b) the Client using the Materials for any purpose other than that for which they were designed;

(c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;

(d) interference with the Works by the Client or any third party without the Supplier's prior approval;

(e) the Client failing to follow any instructions or guidelines provided by the Supplier;

(f) fair wear and tear, any accident, or act of God.

15.11 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.

16. Intellectual Property

16.1 Where the Supplier has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Supplier, and shall only be used by the Client at the Supplier's discretion.

16.2 The Client warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

16.3 The Client agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Supplier has created for the Client.

17. Default and Consequences of Default

17.1 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 the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

17.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's contract default fee, and bank dishonour fees).

17.3 Further to any other rights or remedies the Supplier may have under this contract, if a Client has made payment to the Supplier by credit card, 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 the Supplier under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.

17.4 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Works to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.

17.5 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:

(a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment when it falls due;

(b) the Client becomes insolvent or bankrupt, 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

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

18. Cancellation

18.1 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Supplier for Works already performed. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.

18.2 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).

18.3 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

19. Privacy Act 1988

19.1 The Client agrees for the Supplier 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 applications, credit history) about the Client in relation to credit provided by the Supplier.

19.2 The Client agrees that the Supplier 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 years.

19.3 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.

19.4 The Client agrees that personal credit information provided may be used and retained by the Supplier 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 Client'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 Client; and/or

(d) enabling the collection of amounts outstanding in relation to the Works.

19.5 The Supplier 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.

19.6 The information given to the CRB may include:

(a) personal information as outlined in 19.1 above;

(b) name of the credit provider and that the Supplier 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, 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 Supplier 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 Supplier, 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).

19.7 The Client shall have the right to request (by e-mail) from the Supplier:

(a) a copy of the information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect information; and

(b) that the Supplier does not disclose any personal information about the Client for the purpose of direct marketing.

19.8 The Supplier 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 agreement or is required to be maintained and/or stored in accordance with the law.

19.9 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier 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.

20. Unpaid Seller's Rights

20.1 Where the Client has left any item with the Supplier for repair, modification, exchange or for the Supplier to perform any other service in relation to the item and the Supplier has not received or been tendered the whole of any monies owing to it by the Client, the Supplier shall have, until all monies owing to the Supplier are paid:

(a) a lien on the item; and

(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

20.2 The lien of the Supplier shall continue despite the commencement of proceedings, or judgment for any monies owing to the Supplier having been obtained against the Client.

21. Dispute Resolution

21.1 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 confer at least once, to 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 hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

(a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and

(b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

22. Building and Construction Industry Payments Act 2004 (where applicable)

22.1 At the Supplier'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 Payments Act 2004 may apply.

22.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.

23. Building and Construction Industry Security of Payments Act 1999 (where applicable)

23.1 At the Supplier'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.

23.2 Nothing in this agreement 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.

24. General

24.1 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier'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.

24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland in which the Supplier has its principal place of business, and are subject to the jurisdiction of the courts in Queensland.

24.3 Subject to clause 15, the Supplier shall be under no liability whatsoever 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 Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).

24.4 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 Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.

24.5 The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent.

24.6 The Client agrees that the Supplier may amend these terms and conditions at any time. If the Supplier makes a change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Supplier to provide any Works to the Client.

24.7 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 event beyond the reasonable control of either party.

24.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

Please note that a larger print version of these terms and conditions is available from the Supplier on request.

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