

**1. Definitions**

- 1.1 “Contractor” shall mean Cenjera Holdings Pty Ltd T/A Elected Services its successors and assigns or any person acting on behalf of and with the authority of Cenjera Holdings Pty Ltd T/A Elected Services.
- 1.2 “Customer” shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Contractor to the Customer.
- 1.3 “Guarantor” means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 “Goods” shall mean Goods supplied by the Contractor to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Contractor to the Customer.
- 1.5 “Services” shall mean all Services supplied by the Contractor to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 “Price” shall mean the price payable for the Goods as agreed between the Contractor and the Customer in accordance with clause 4 of this contract.

**2. The Commonwealth Trade Practices Act 1974 (“TPA”) and Fair Trading Acts (“FTA”)**

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

**3. Acceptance**

- 3.1 Any instructions received by the Contractor from the Customer for the supply of Goods and/or the Customer’s acceptance of Goods supplied by the Contractor shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of the Contractor.
- 3.4 The Customer shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer’s name and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by the Contractor as a result of the Customer’s failure to comply with this clause.
- 3.5 Goods are supplied by the Contractor only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

**4. Price And Payment**

- 4.1 At the Contractor’s sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by the Contractor to the Customer in respect of Goods supplied; or
  - (b) the Contractor’s current price at the date of delivery of the Goods according to the Contractor’s current Price list;or
  - (c) the Contractor’s quoted Price (subject to clause 3.2) which shall be binding upon the Contractor provided that the Customer shall accept the Contractor’s quotation in writing within thirty (30) days.
- 4.2 The Contractor reserves the right to change the Price in the event of a variation to the Contractor’s quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties beyond the reasonable control of the Contractor) will be detailed in writing and charged for on the basis of the Contractor’s quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At the Contractor’s sole discretion a deposit may be required.
- 4.4 At the Contractor’s sole discretion:
  - (a) payment shall be due on delivery of the Goods; or
  - (b) payment for approved Customers shall be made by instalments in accordance with the Contractor’s payment schedule.
- 4.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and the Contractor.
- 4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

**5. Delivery Of Goods**

- 5.1 At the Contractor’s sole discretion delivery of the Goods shall take place when the Customer takes possession of the Goods at the Customer’s nominated address (in the event that the Goods are delivered by the Contractor or the Contractor’s nominated carrier).
- 5.2 At the Contractor’s sole discretion the costs of delivery is included in the Price.

- 5.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Contractor shall be entitled to charge a reasonable fee for redelivery.
- 5.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.5 The failure of the Contractor to deliver shall not entitle either party to treat this contract as repudiated.
- 5.6 The Contractor shall not be liable for any loss or damage whatsoever due to failure by the Contractor to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of the Contractor.

## **6. Risk**

- 6.1 If the Contractor retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Contractor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.

## **7. Damages**

- 7.1 The Contractor shall not be liable for any loss or damage caused in accessing the work site beyond reasonable control of the Contractor (including, ceiling tiles and panels, face brickwork and rendered masonry services, which the Contractor may have to break into or disturb in performance of the Services and/or damage to pathways, driveways and concreted or paved or grassed areas).

## **8. Underground Locations**

- 8.1 Prior to the Contractor commencing any work the Customer must advise the Contractor of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer 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, Telstra cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 8.2 Whilst the Contractor will take all care to avoid damage to any underground services the Customer 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 8.1.

## **9. Title**

- 9.1 The Contractor and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Contractor all amounts owing for the particular Goods; and
  - (b) the Customer has met all other obligations due by the Customer to the Contractor in respect of all contracts between the Contractor and the Customer.
- 9.2 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 the Goods shall continue.
- 9.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until the Contractor shall have received payment and all other obligations of the Customer are met; and
  - (b) until such time as ownership of the Goods shall pass from the Contractor to the Customer the Contractor may give notice in writing to the Customer to return the Goods or any of them to the Contractor. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
  - (c) the Contractor shall have the right of stopping the Goods in transit whether or not delivery has been made; and
  - (d) if the Customer fails to return the Goods to the Contractor then the Contractor or the Contractor's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
  - (e) the Customer is only a bailee of the Goods and until such time as the Contractor has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to the Contractor for the Goods, on trust for the Contractor; and
  - (f) the Customer shall not deal with the money of the Contractor in any way which may be adverse to the Contractor; and
  - (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Contractor; and
  - (h) the Contractor can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
  - (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Contractor will be the owner of the end products.

## **10. Defects**

- 10.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the

description or quote. The Customer shall afford the Contractor an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Contractor has agreed in writing that the Customer is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (CWlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.

10.2 Goods will not be accepted for return other than in accordance with 10.1 above.

## 11. Returns

11.1 Returns will only be accepted provided that:

- (a) the Customer has complied with the provisions of clause 10.1; and
- (b) the Contractor has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
- (d) the Contractor will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

11.2 The Contractor may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty-five percent (25%) of the value of the returned Goods plus any freight.

## 12. Warranty

12.1 For Goods not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Contractor shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

## 13. Intellectual Property

13.1 Where the Contractor has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in the Contractor, and shall only be used by the Customer at the Contractor's discretion.

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

## 14. Default & Consequences of Default

14.1 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 one half percent (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.

14.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by the Contractor.

14.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in pursuing the debt including legal costs on a solicitor and own client basis and the Contractor's collection agency costs.

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

14.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.

14.6 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

## 15. Security And Charge

15.1 Despite anything to the contrary contained herein or any other rights which the Contractor may have howsoever:

- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Contractor or the Contractor's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree 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.
- (b) should the Contractor elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Contractor or the Contractor's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 15.1.

## **16. Dispute Resolution**

- 16.1 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.

## **17. Compliance with Laws**

- 17.1 The Customer and the Contractor 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.
- 17.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the works.
- 17.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

## **18. Cancellation**

- 18.1 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Contractor shall repay to the Customer any sums paid in respect of the Price. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Contractor (including, but not limited to, any loss of profits) up to the time of cancellation.

## **19. Privacy Act 1988**

- 19.1 The Customer and/or the Guarantor/s agree for the Contractor to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Contractor.
- 19.2 The Customer and/or the Guarantor/s agree that the Contractor may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the credit worthiness of Customer and/or Guarantor/s.
- 19.3 The Customer consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 19.4 The Customer agrees that personal credit information provided may be used and retained by the Contractor for the following purposes and for other purposes as shall be agreed between the Customer and Contractor or required by law from time to time:
- (a) provision of Goods; and/or
  - (b) marketing of Goods by the Contractor, its agents or distributors in relation to the Goods; and/or
  - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
  - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.

- 19.5 The Contractor may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer; and/or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

**20. Building and Construction Industry Security of Payments Act 1999**

- 20.1 At the Contractor's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 20.2 Nothing in this agreement is intended to have the affect 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.

**21. General**

- 21.1 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.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 21.3 The Contractor shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Contractor of these terms and conditions.
- 21.4 In the event of any breach of this contract by the Contractor the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 21.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 21.6 The Contractor may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 21.7 The Customer agrees that the Contractor may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Customer of such change.
- 21.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 21.9 The failure by the Contractor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Contractor's right to subsequently enforce that provision.