



O'Brien Electrical Adelaide CBD

LIC. PGE 269105

263 Sturt Street, Adelaide SA 5000

P: 1300 051 482

E: adelaidecbd@electrical.obrien.com.au

PLEASE PAY BY

AMOUNT

INVOICE DATE

28/11/2021

\$417.26

29/10/2021

## TAX INVOICE NO. 28612

John Bray  
E.J Bray  
Po Box 623  
Blackwood SA 5051

Job No.: 34145  
Site: Shop 5  
Site Address:  
Order No.:

### Description

#### Gavin Fraser (28/09/2021) - Work Note

Travelled to site. Met Gary. Scoped job.  
Will need to return when positions are finalised.

#### Gavin Fraser (05/10/2021) - Work Note

Arrived on site. Installed 4 x 25mm conduits with bends from wall to Island bench as per drawing.  
Ran draw wires inside and put into position.  
Capped both ends with tape.

### Under Floor conduits - Conduits to counter

Sub-Total ex GST \$379.33

**Billing Enquiries** - Please review this invoice if there is a problem or a concern please contact our office within 5 working days by phone on 1300 051 482 or email

[accounts.adelaidecbd@electrical.obrien.com.au](mailto:accounts.adelaidecbd@electrical.obrien.com.au)

Sub-Total ex GST	\$379.33
GST	\$37.93
<b>Total inc GST</b>	<b>\$417.26</b>
Amount Applied	\$0.00
<b>Balance Due</b>	<b>\$417.26</b>

Please reference invoice number in all payments.

## How To Pay

INVOICE NO. 28612



### Mail

Detach this section and mail cheque to:

O'Brien Electrical Adelaide CBD  
PO Box 3529, Rundle Mall  
Adelaide SA 5000



### Direct Deposit

Bank **Bank SA**  
Acc. Name **Main & Berry trading as O'Brien Electrical Adelaide CBD**  
BSB **105148**  
Acc. No. **029329340**

**DUE DATE:** 28/11/2021 **AMOUNT DUE:** \$417.26



### Credit Card (MasterCard or Visa)

Credit Card payments call 1300 051 482  
1.5% fee applicable Visa and Mastercard

**Experts making it easy™**

# Main & Berry Pty Ltd T/A O'Brien Electrical Adelaide CBD – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "Seller" means Main & Berry Pty Ltd T/A O'Brien Electrical Adelaide CBD, its successors and assigns or any person acting on behalf of and with the authority of Main & Berry Pty Ltd T/A O'Brien Electrical Adelaide CBD.
- 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 (where the context so permits, the term "Client" shall also mean the Client's duly authorised representative).
- 1.3 "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Seller 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 (plus any GST where applicable) for the Works as agreed between the Seller and the Client in accordance with clause 5 below.
- 1.5 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999".
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 consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Seller.
- 2.3 The Client accepts and acknowledges that a minimum call out fee applies for any Works performed by the Seller after hours. Such call out fee shall be equal to two (2) hours' labour at the Seller's standard hourly labour rate, plus travel costs, plus parts.
- 2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
3. **Authorised Representatives**
- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to the Seller as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Materials or Works on the Client's behalf and/or to request any variation to the Works on the Client's behalf (such authority to continue until all requested Works have been completed or the Client otherwise notifies the Seller in writing that said person is no longer the Client's duly authorised representative).
- 3.2 In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf, then the Client must specifically and clearly advise the Seller in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client acknowledges and agrees where the Client does not elect to control their purchases by a Purchase Order and/or a Letter of Authority, then all purchases made by Client and/or any other third party acting on behalf of the Client to which the Materials are charged to the Client's credit account, shall remain at all times payable by the Client. All said notices of restrictions pertaining to purchases must be in writing and will remain in place until such time as the Client revokes.
- 3.4 The Client agrees to notify the Seller in writing immediately upon the departure of the Client employee if an authorised account user. Where there is failure to notify the Seller of such departures, then the Client acknowledges they will be bound by all purchase orders made by that account user.
- 3.5 The Client specifically acknowledges and accepts that they will be solely liable to the Seller for all additional costs incurred by the Seller (including the Seller's profit margin) in providing any Works, Materials or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).
4. **Change in Control**
- 4.1 The Client shall give the Seller 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 numbers, or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client's failure to comply with this clause.
5. **Price and Payment**
- 5.1 At the Seller's sole discretion, the Price shall be either:
  - (a) as indicated on invoices provided by the Seller to the Client in respect of Works performed or Materials supplied; or
  - (b) the Seller's quoted Price (subject to clause 5.2) which shall be binding upon the Seller provided that the Client shall accept the Seller's quotation in writing within thirty (30) days.
- 5.2 The Seller 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 unforeseen circumstances occur (including but not limited to variations in shipping/logistics costs); or
  - (d) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to poor weather conditions, limitations to site accessibility, safety considerations, prerequisite work by any third party not being completed, obscured building defects, change of design, hidden wiring in walls, etc.) which are only discovered on commencement of the Works; or
  - (e) in the event of increases to the Seller in the cost of labour or materials which are beyond the Seller's control; or
- 5.3 Variations will be charged for on the basis of the Seller's quotation, and will be detailed in writing, and shown as variations on the Seller's invoice. The Client shall be required to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At the Seller's sole discretion, a non-refundable deposit may be required.
- 5.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Seller, which may be:
  - (a) on completion of the Works; or
  - (b) by way of progress payments in accordance with the Seller's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
  - (c) for an approved credit account holder, payment shall be due thirty (30) days following the date of the invoice; or
  - (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 Seller. Payment may be made by cash, cheque, bank cheque, electronic/online banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Seller. 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 Seller nor to withhold payment of any invoice because part of that invoice is in dispute. Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller 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. **Provision of the Works**
- 6.1 At the Seller's sole discretion, the cost of delivery is included in the Price. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
  - (a) the Client or the Client's nominated carrier takes possession of the Materials at the Seller's address; or
  - (b) the Materials are delivered by the Seller or the Seller's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- 6.2 Subject to clause 6.4 it is the Seller's responsibility to ensure that the Works start as soon as it is reasonably possible. The Works commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Seller claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Seller'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 Seller that the site is ready.
- 6.3 The Seller may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions. Any time specified by the Seller for delivery of the Works is an estimate only and the Seller will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that the Seller is unable to supply the Works as agreed solely due to any action or inaction of the Client, then the Seller shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
- 6.4 **Risk**
- 6.5 If the Seller retains ownership of the Materials under clause 12 then where the Seller 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. Where the Seller is to both supply and install Materials then the Seller shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Materials shall immediately pass to the Client. Notwithstanding the provisions of clauses 7.1, if the Client specifically requests the Seller to leave Materials outside the Seller'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.
- 6.6 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring standards. The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing), the Seller reasonably forms the opinion that the Client's premises are not safe for the installation of Materials to proceed then the Seller shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 6) until the Seller is satisfied that it is safe for the installation to proceed. The Seller may in agreement with the Client bring the premises up to a standard suitable for installation to proceed but all such Works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.
- 6.7 Where the Client has supplied Materials for the Seller to complete the Works, the Client acknowledges and accepts responsibility for the suitability of purpose, quality and any faults that may be inherent in the Materials. The Seller shall not be responsible for any defects in the Materials, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of Materials supplied by the Client. The Client acknowledges that the Seller is only responsible for parts that are replaced by the Seller; in the event that other parts/Materials subsequently fail, the Client agrees to indemnify the Seller against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising (including but not limited to, loss of perishables, flooding, and/or damage to clothing). The Seller 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 Seller accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information. Any advice, recommendation, information, assistance or service provided by the Seller in relation to Materials or Works supplied is given in good faith, is based on the Seller's own knowledge and experience and shall be accepted without liability on the part of the Seller, and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Materials or Works. The Client acknowledges that all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in the Seller's fact sheets, price lists or advertising material are indicative only and that they have not relied on such information. Where the Client is a tenant (and therefore not the owner of the land and premises where the Materials are to be installed) then the Client warrants that full consent has been obtained from the owner for the Seller to install the Materials on the owner's land and premises. The Client acknowledges and agrees that they shall be personally liable for full payment of the Price for all works provided under this agreement and to indemnify the Seller against any claim made by the owner of the premises (howsoever arising) in relation to the installation of the Materials and the provision of any related Works by the Seller except where such claim has arisen because of the negligence of the Seller when installing the Materials. The Client agrees that they shall upon request from the Seller provide evidence that:
  - (a) they are the owner of the land and premises upon which the Works are undertaken; or
  - (b) where they are a tenant, that they have the consent of the owner for the Materials to be installed on the land and premises upon which the Works are undertaken.
- 6.8 If the Seller notifies the Client that it intends to store onsite Materials, plant, equipment or tools to be used in performance of the Works, then the Client shall designate an area for storage and shall take all reasonable precautions to protect such items against destruction, damage, or theft. In the event that such items are destroyed, damaged or stolen then the cost of replacement shall be added to the contract Price and will be shown as a variation as per clause 5.2. The Client acknowledges that they shall not be entitled to withhold any payment due under this contract because of any delay in the connection of, or the supply of electricity to the Materials by an electrical distributor or any other third party.
7. **Access**
- 7.1 The Client shall ensure that the Seller has clear and free access to the work site at all times to enable them to undertake the Works (including to carry out site inspections, gain signatures for required documents, and for the delivery and installation of the Materials). The Seller shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of the Seller. The Client agrees to be present at the worksite when and as reasonably requested by the Seller and its employees, Sellers and/or agents.
8. **Underground Locations**
- 8.1 Prior to the Seller commencing any work the Client must advise the Seller of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client 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 site. Whilst the Seller will take all care to avoid damage to any underground services the Client agrees to indemnify the Seller 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 9.1.
9. **Data Risk**
- 9.1 The Client acknowledges and agrees that:
  - (a) the Seller does not guarantee the performance or transmission speed or quality of any data; and
  - (b) transmission of data may be unavailable from time to time due to scheduled maintenance and/or upgrades to websites, servers or networks by third parties; and
  - (c) there are inherent hazards in electronic distribution (including, but not limited to electrical interference, surges or spikes, high traffic volume affecting speed, etc.) and as such the Seller cannot warrant against delays or errors in transmitting data between the Client and any person or entity the Client conducts communications with including orders, and you agree that the Seller will not be liable for any losses which the Client suffers as a result of delays or errors in transmitting orders or other communications and/or documents.
10. **Excavations**
- 10.1 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, the Seller reserves the right to treat all retentions as placing the Client's account into default. The Seller shall have public liability insurance of at least \$5m. It is the Client's responsibility to ensure that they are similarly insured.
11. **Title**
- 11.1 The Seller and the Client agree that ownership of the Materials shall not pass until:
  - (a) the Client has paid the Seller all amounts owing to the Seller; and
  - (b) the Client has met all of its other obligations to the Seller.
- 11.2 Receipt by the Seller 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. It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 12.1:
  - (a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Seller on request.
  - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for the Seller and must pay to the Seller 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 Seller shall be sufficient evidence of the Seller's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Seller 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 Seller and must pay or deliver the proceeds to the Seller on demand.
  - (e) the Client should not convert or process the Materials or intermix them with other Materials but if the Client does so then the Client holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs.
  - (f) unless the Materials have become fixtures the Client irrevocably authorises the Seller to enter any premises where the Seller believes the Materials are kept and recover possession of the Materials.
  - (g) the Seller 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 Seller.
  - (i) the Seller may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

Please note that a larger print version of these terms and conditions is available from the Seller upon request

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# Main & Berry Pty Ltd T/A O'Brien Electrical Adelaide CBD – Terms & Conditions of Trade

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 Seller for Works – that have previously been supplied and that will be supplied in the future by the Seller 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 Seller 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 13.3(a)(i) or 13.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Seller 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 Seller;
- (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 Seller;
- (e) immediately advise the Seller 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 Seller 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 Seller, 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 Seller under clauses 13.3 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13) 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 Seller 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 Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
- 14.3 The Client irrevocably appoints the Seller and each director of the Seller 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 Seller 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 as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Seller 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 Seller 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 Seller 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 Seller'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 Seller's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If the Seller is required to replace any Materials under this clause or the CCA, but is unable to do so, the Seller may refund any money the Client has paid for the Materials.
- 15.7 If the Seller 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 Seller 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 Seller'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 Seller at the Seller's sole discretion;
- (b) limited to any warranty to which the Seller is entitled, if the Seller 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 Seller 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 Seller 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 Seller's prior approval;
- (e) the Client failing to follow any instructions or guidelines provided by the Seller;
- (f) fair wear and tear, exposure to weather conditions over time, any accident, misuse, abuse, negligence, vandalism, alteration, modification;
- (g) faulty power supply, power failure, electrical strikes or surges, act of God (including but not limited to, lightning, flood, storm, extreme heat, fire, acidic or salty air or other occurrences) outside the control of the Seller.
- 15.11 The Seller may in its absolute discretion accept non-defective Materials for return in which case the Seller may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Materials plus any freight costs.
- 15.12 Notwithstanding anything contained in this clause if the Seller is required by a law to accept a return then the Seller will only accept a return on the conditions imposed by that law.
16. **Intellectual Property**
- 16.1 Where the Seller 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 Seller, and shall only be used by the Client at the Seller's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Seller.
- 16.2 The Client warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 16.3 The Client agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Seller 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 Seller'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 Seller any money the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's contract default fee, and bank dishonour fees).
- 17.3 Further to any other rights or remedies the Seller may have under this contract, if a Client has made payment to the Seller, 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 Seller 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 the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by the Seller;
- (c) 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
- (d) 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 Without prejudice to any other remedies the Seller 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 Seller may suspend or terminate the supply of Works to the Client. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.
- 18.2 The Seller 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 Seller shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Seller for Works already performed. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 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 Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.4 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. **Building and Construction Industry Security of Payments Act 2009**
- 19.1 At the Seller's sole discretion, if there are any disputes or claims for unpaid Works and/or Materials then the provisions of the Building and Construction Industry Security of Payments Act 2009 may apply.
- 19.2 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 2009 of South Australia, except to the extent permitted by the Act where applicable.
20. **Compliance with Laws**
- 20.1 The Client and the Seller 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.
- 20.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 20.3 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.
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. **Privacy Act 1988**
- The Client agrees for the Seller 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 Seller.
- The Client agrees that the Seller may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- The Client consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit.
- The Client agrees that personal credit information provided may be used and retained by the Seller 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.
- 22.5 The Seller 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.
- The information given to the CRB may include:
- (a) personal information as outlined in 22.1 above;
- (b) name of the credit provider and that the Seller 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 Seller 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 Seller, 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).
- 22.7 The Client shall have the right to request (by e-mail) from the Seller:
- (a) a copy of the information about the Client retained by the Seller and the right to request that the Seller correct any incorrect information; and
- (b) that the Seller does not disclose any personal information about the Client for the purpose of direct marketing.
- The Seller 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.
- 22.9 The Client can make a privacy complaint by contacting the Seller via e-mail. The Seller 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](http://www.oaic.gov.au).
23. **General**
- 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.
- These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia, the state in which the Seller has its principal place of business, and are subject to the jurisdiction of the Adelaide CBD Courts in that state.
- Subject to clause 15 the Seller 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 Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- Neither party shall assign or sub-contract all or any part of their rights and obligations under this agreement without the written consent of the other party (which shall not be unreasonably withheld). The Seller may elect to sub-contract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Seller's sub-contractors without the authority of the Seller.
- The Client agrees that the Seller may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Seller to provide Works to the Client.
- 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.
- Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.

Please note that a larger print version of these terms and conditions is available from the Seller upon request

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