

Alegra Building Services – Terms & Conditions

1) Definitions / Interpretation

- **Supplier** means Alegra Building Services (ABN 15 460 973 128), its successors and assigns or any person acting on behalf of and with the authority of Alegra Building Services.
- **Customer** means the person/s buying the Goods or Works as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- **Quotation** means the quotation provided by the Supplier to the Customer, with these terms and conditions, if applicable.
- **Documents** means any documents listed in or provided with the Quotation;
- **Contract** means the contract for supply of Goods and/or Works and comprises in its entirety the Supplier's Quotation, these conditions and the Documents in that order of priority.
- **Price** means the price set out in the Quotation as adjusted in accordance with this Contract. CUSTOMER SHOULD NOTE THAT THE PRICE MAY CHANGE – See clause 8a)
- **Works** means the Works described in the Quotation.
- **Goods** means the goods, materials and equipment (including any instalment or part of them) described in this Contract or the Quotation.
- **Insolvent** means where a party ceases to carry on business or is, or states that it is, unable to pay its debts as they fall due or is placed under official management or administration or enters a scheme of arrangement or is made bankrupt or wound up.
- **Laws** include all acts, regulations, bylaws, licenses and all the requirements of statutory authorities having jurisdiction in connection with the supply of the Goods and/or Works.
- **Loss** means liability, loss, damages, fines, costs and/or expenses (and legal expenses on an indemnity basis) awarded against, suffered or incurred by the Customer.

2) Conditions and Acceptance

- a) The Conditions apply to the Contract to the exclusion of any other terms and conditions. Any Quotation approval, grant of access to commence Works, acceptance of delivery or payment by the Customer following the issue of a Contract will constitute acceptance by the Customer of the Contract.

3) Warranties

The Supplier warrants to the Customer:

- a) that it will at all times in the supply of the Goods and the performance of the Works be properly licensed;
- b) that the Goods will be of a good and proper standard; and
- c) that the Works will be performed:
 - i. in a proper manner to accepted trade standards;
 - ii. in accordance with the Documents;
 - iii. in accordance with all Laws;
 - iv. with reasonable diligence; and
 - v. safely and without causing any injury or death to any person.

4) Delivery of Goods and Performance of Works

- a) When the Contract is for the supply of Goods only, the Goods must be delivered to the address for delivery free from defects and in an undamaged condition.
- b) The Supplier may, at any time, substitute any Goods with goods that are of an equivalent or better standard.
- c) Unless part of the Quotation, the Customer shall obtain (at the Customer's expense) all licenses and approvals that may be required to complete the Works.

5) Site Access

- a) The Customer grants and shall ensure that the Supplier has clear and free access to the work site at all times to enable them to undertake the Works.
- b) 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.

6) Non-compliant Goods or Works

- a) The Supplier will pass on to the Customer any manufacturers' warranties that are applicable to the Goods.
 - b) If the Customer believes that any Goods supplied or any aspect of the Works performed by the Supplier are not in accordance with the Contract, the Customer must:
 - (a) notify the Supplier as soon as reasonably practicable that the Goods or the Works do not comply with the Contract; and provide details of the non-compliance; and
 - (b) give the Supplier a reasonable opportunity to inspect and if the Supplier decides to do so, replace, repair, or rectify the Goods or the Works.
- The Supplier may:
- (a) notify the Customer that the Supplier does not agree that the Goods are defective; or
 - (b) decide to repair the Goods or replace them within a reasonable time with goods of an equivalent or higher standard.

7) Limitation of Liability

- a) Despite any other provision of the Contract, the parties acknowledge and agree that to the extent permitted by Law:
 - (a) in no event will the Supplier's liability to the Customer exceed, and is limited to:
 - vi. replacing or repairing any defective Goods;
 - vii. rectifying any defective Works; or
 - viii. if the Supplier is not able to supply replacement Goods or rectify the Works so that they comply with the Contract, refunding any monies paid by the Customer for Goods or Works that are non-compliant and making good any part of the Site that has been damaged during the performance of the Works; and

(b) the Supplier will have no liability for any other Loss of the Customer including due to the breach of contract or negligence of the Supplier, its employees or agents or any third party not within the control of the Supplier.

8) Price of the Goods and/or Works

- a) The Price of the Goods and/or Works is as stated in the Quotation (and valid for 30 days unless stated otherwise) and is adjustable in accordance with the terms of the Contract. The Price may change for factors outside of the Supplier's control including variations to the Works by the Customer, difficulties with access to the site, changes in any Laws, delays not caused by the Supplier and unforeseen site and ground conditions, including subsurface conditions.
- b) The Customer must pay the Supplier's reasonable costs in connection with any of the items set out in clause 7a and any other costs arising for reasons out of the Supplier's control or in relation to items that were excluded from the Price in the Quotation.

9) Terms of Payment

- a) The Supplier may submit a valid tax invoice for the Price at any time after delivery of Goods or Works completed in accordance with the Contract.
- b) A non-refundable deposit may be required as specified on the Quotation before the Supplier will commence any Works.
- c) The Customer must pay the Price (minus any deposit paid) without set off or deduction within 7 days of the tax invoice being sent to the Customer. Interest is payable on any late payments at a rate of 8% pa.

10) Risk and Property

- a) Risk of damage to or Loss of the Goods passes to Customer upon delivery of Goods and/or Works at the delivery address in accordance with the Contract.
- b) Property in the Goods passes to Customer upon delivery to Customer at the Delivery Address or when payment is made, whichever is later.
- c) The Supplier may commence proceedings to recover the Price of the Goods notwithstanding that property (ownership) of the Goods has not passed to the Customer.

11) Insurance and Indemnity

- a) The Supplier must obtain public and product liability insurance in the amount that is sufficient to cover its potential liabilities in relation to this Contract, and must ensure that any employees engaged in the performance of the contract are registered with ReturnToWork SA or equivalent body in the applicable state, territory or country.
- b) The Customer must ensure that the site or any existing property of the Customer near the site is insured by the Customer for full replacement value.
- c) The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including debt recovery services, legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.

12) Intellectual Property

- a) Any Documents supplied by the Supplier to the Customer, or any Documents specifically produced by the Supplier remains the property of the Supplier. The Customer must not disclose or use any such Documents for any other purpose than the use of the Goods and/or the product of the Works performed under this Contract.

13) Cancellation

- a) The Supplier may cancel any Contract at any time before the Goods are delivered and/or Works started by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any money paid by the Customer. The Supplier shall not be liable for any Loss or damage whatsoever arising from such cancellation.
- b) In the event that the Customer cancels the Contract, the Customer 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).

14) Suspension and Termination

- a) The Supplier is entitled to suspend delivery of the Goods or performance of the Works if any invoice remains unpaid after the due date for payment. If the overdue invoice remains unpaid for 14 days or more, the Supplier may terminate the Contract and seek costs already incurred from the Customer.
- b) Either party may terminate the Contract for any other substantial breach of contract by the other party, provided that the party who intends to terminate the Contract has first written to the other party:
 - (a) notifying that other party that it intends to terminate the Contract;
 - (b) specifying the substantial breach complained of; and
 - (c) giving the other party a reasonable opportunity to rectify the substantial breach (and in any event no less than 28 days).
- c) Subject to s.451E of the Corporations Act 2001 (Cth), either party may seek the consent of the liquidator or administrator to terminate the Contract if the other party is Insolvent.

15) General

- a) The Contract is governed by the laws of South Australia and the parties submit to the exclusive jurisdiction of the South Australian courts and, where applicable, the Federal Court of Australia. The parties agree that prior to commencing any court proceedings they will make genuine and good faith attempts to resolve any disputes by executive negotiation and by mediation.
- b) The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- c) 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.