

TERMS AND CONDITIONS OF CONTRACT – M.J.WOODGATE PTY LTD T/AS UNICUT

1. The Parties

- 1.1 The Contract is with the Supplier and is for the supply of the Goods and Services specified in the Order Schedule. The Supplier may sub-contract the performance of any part of this Contract to any person on any terms at the Supplier's sole discretion.

2. Acceptance of these Terms and Conditions

- 2.1 Unless otherwise specified in the Order Schedule, the terms and conditions in the Contract override all other terms and conditions contained in any other documents including the Customers terms and conditions.

3. Contract Price

- 3.1 The Customer must pay the Supplier one 40% of the Contract Price by way of a deposit on acceptance of the Order Schedule. The balance must be paid prior to Delivery in respect of Goods, or Practical Completion in respect of Services; or one 40% by way of a deposit when the Customer signs the Order Schedule and, if the Order Schedule specifies a payment schedule, then the Customer must pay the balance in accordance with the payment schedule.
- 3.2 Delay in payment of the balance incurs interest at 14% per annum calculated daily by reference to amounts outstanding and compounding daily.
- 3.3 The Contract Price stated in an Order Schedule will remain unchanged for 14 days from the date of that Order Schedule, unless otherwise specified in the Order Schedule.
- 3.4 Unless otherwise specified in the writing the contract Price does not include:
- a) Any work outside normal working hours;
 - b) Any alteration or rectification to ceilings, amenities, fire-stairs, lifts, windows or external works;
 - c) Any construction of firewall and/or doors;

- d) Any alteration to existing building services including but not limited to fire control, sprinkler systems, smoke detectors, exit and emergency lighting, plumbing and drainage, hydraulics, air-conditioning or electrical mains supply;
 - e) Any fees of any consultants and professional including but not limited to electrical, mechanical and structural engineers or consultants;
 - f) Any alteration to electrical work including ducted skirting, power-points, lighting, work done between switchboards or on switchboards, or any electronic installation, data cabling or telephone cabling or telephone systems;
 - g) Building or development applications to council or any regulatory authority.
- 3.5 Where there is a dispute, the Customer may only retain the portion of the balance that relates to the portion of Goods or Services in Dispute, but not exceeding 2.5% of the Contract Price. All money outstanding must be paid within 7 days after resolution of the Dispute.

4. Retention of Title

- 4.1 Unless otherwise specified, risk in the Goods passes to the Customer on Delivery of those Goods.
- 4.2 Where the Customer has requested a Special Delivery, risk in the Goods passes to the Customer upon the goods leaving the supplier's premises. The supplier will not be liable for damage, shortage or loss during transit of the Goods.
- 4.3 Title to Goods shall remain with the Supplier until the Supplier has received the full Contract Price in cleared funds for those Goods.
- 4.4 The Supplier may recover the Goods if they are in the Customer's possession and resell them if any payment is owed by the Customer. For this purpose the Supplier may enter the Customer's premises and other premises on which the Goods are situated to remove the Goods. The Customer hereby gives its irrevocable consent to the Supplier using such force as may be necessary to gain entry to the Customer's premises for the purpose of determining if the Goods are at the premises and for recovering those Goods.

5. The Customer's Obligations

- 5.1 The Customer must nominate one or more persons to be the Customer's authorised representative who must be present on site or readily contactable by the Supplier at all times for clarification or authorization on any matter relevant to the supply of the Supplier's Goods and/or Services.
- 5.2 The Customer must ensure that all preparatory works required to be done by the Customer or any third parties (as mutually agreed) are completed before the Supplier's commencement date.
- 5.3 The Customer must provide and maintain, at the Customer's own cost, appropriate arrangements for the security of the site and its contents, including the Goods, for the duration of the Contract. This includes extra security required for work outside of normal Working Hours.
- 5.4 The Customer must make available to the Supplier the toilet facilities and other amenities as well as electrical and telephone services existing on the site without cost to the Supplier.

6. Delivery & Access

- 6.1 Delivery subject at all times to factors outside the Supplier's control, such as and not limited to holidays, fire, strikes, lockouts, sickness, freight delays and other contingencies and in all cases subject to confirmation or alteration if and when offered order is accepted by us.
- 6.2 The Customer must ensure that the Supplier as full, clear and unrestricted access for Delivery of Goods and Services and for hoisting of men and materials at all times and that any preparatory work is complete. The Contract Price and Delivery and Practical Completion dates may be varied by the Supplier in the event of a breach of this Clause and the customer shall be liable for extra charges, loss and or expense incurred by the Supplier, Staged delivered and installation will require extra time and may incur extra cost. These cost will be payable by the Customer.

7. Risk and Insurance

- 7.1 The Supplier will maintain statutory Workers Compensation insurance and public liability insurance of at least \$5,000 000.00

- 7.2 The Customer will maintain property and liability insurance for the whole value of the Contract from commencement until Final Completion, for the benefit of the Supplier.
- 7.3 The Customer will maintain all risks insurance for the full value of the project that names the Supplier as a person to whom the cover is extended.
- 7.4 The Supplier's insurance policies are for the Supplier's own benefit only and do not cover the Customer's risks.

8. Council Approval

- 8.1 Unless otherwise stated in the Order Schedule, the Customer is solely responsible for identifying and obtaining approvals from Council and other Government bodies prior to commencement. The Customer holds harmless and will indemnify the Supplier for any liability arising from identifying and obtaining approvals from any Government authorities such as Council or the failure to do so.

9. Rectification or Re-Usage of Existing Customer Material

- 9.1 The Order Schedule is submitted on the basis that any of the Customer's materials that are to be used in connection with the Services conform to relevant Government regulations, including product safety standards. The Supplier is authorised to replace any materials not so conforming or proving to be defective at the Customer's cost.

10. Variation by Customer and Extras

- 10.1 Any variation to the Contract must be by mutual agreement. The Supplier reserves the right to revise and amend the Contract Price if there are any such variations.

11. Specifications and Finish

- 11.1 All dimensions in this Contract are approximations. Actual dimensions will be as close as practicable to those specified.

- 11.2 Subject to clause 11.4 below colours anodizing, materials, fabrics, glazing and alike will be the nearest commercially available to those specified in the Order schedule.
- 11.3 All work will be carried out in accordance with specification and drawings attached to the Order Schedule, but subject to deviation at the Supplier's discretion subject to building mullions, pillars, ceilings, uneven floor levels and alike.
- 11.4 The Supplier reserves the right to change the materials used to take advantage of any technical developments, improvements or modifications that the supplier considers desirable.

12. Building Alteration

- 12.1 The Order Schedule is given on the basis that the building where the Services are to be carried out is soundly constructed and capable of being altered in the manner proposed in the Order Schedule without any of the work of any kind whatsoever being required.
- 12.2 The Customer warrants to the Supplier that the building is capable of being altered in the manner proposed and if any work over and above that quoted for is required the Customer will bear the full cost associated with such additional work.

13. Cancellation by the Customer

- 13.1 Order Schedules accepted by the Customer cannot be cancelled except with the Supplier's written consent. The Customer must indemnify the Supplier against all loss and damage in relation to any part of the Order Schedule that is cancelled.

14. Extent of the Supplier's Liability

- 14.1 To the full extent permitted by law the Owner excludes all implied terms and conditions and warranties including, without limitation, terms, conditions and warranties implied by Commonwealth or State legislation.
- 14.2 The Seller and the Buyer agree that in the event of the Buyer suffering any loss (including economic loss), damage, cost, expense or claim howsoever arising as a result of hiring or purchasing the product,

including without limitation in respect of delay or inconvenience arising out of any breakdown, failure or defect in the product, the liability of the Owner is limited to the value of the goods and/or service provided. The Seller shall not be liable under any circumstances for any direct, indirect, economic special or consequential or damage of any nature whatsoever.

15. Force Majeure Event

- 15.1 If the Supplier is wholly or partially prevented from complying with its obligations under this Contract by a Force Majeure Event then its obligations to perform in accordance with this Contract will be suspended for the duration of the delay arising out of the Force Majeure Event. The Supplier must notify the Customer of a Force Majeure Event as soon as possible and the extent to which the Supplier is unable to perform its obligations.
- 15.2 If a Force Majeure Event lasts longer than 10 days the Supplier may terminate this Contract by giving written notice to the Customer.

16. Goods and Services Tax

- 16.1 Amounts payable by the Customer to the Supplier under this Contract are GST exclusive. From the date when the Supplier becomes liable for Goods and Services Tax (GST) in respect of a taxable supply under this Contract the Customer must pay to the Supplier an additional amount in respect of that taxable supply equal to the GST paid or payable by the Supplier in respect of that taxable supply. This additional payment by the Customer must be made at the same time as the GST exclusive consideration for the taxable supply is payable by the Customer to the Supplier. The terms used in this Clause that have defined meaning in "A New Tax System (Goods and Services Tax) Act 1999" shall have the same meaning in this Clause.

17. General

- 17.1 Part of all of any clause of this Contract that is unenforceable will be severed from this Contract and will not affect the enforceability of the remaining provision of this Contract.

- 17.2 A party's failure to insist that another party perform any obligation under this Contract is not a waiver of that party's right.
- 17.3 This Contract is governed by New South Wales law and each party agrees to submit to the jurisdiction of the courts in that State.

18. Definitions

- 18.1 "Contract" means this contract for the provision of Goods and/or Services under the order Schedule and is subject to these terms and conditions.
- 18.2 "Contract Price" means the amount specified in the Order Schedule for the supply of Goods and/or Services.
- 18.3 "The Customer" means the individuals, corporations or the Directors of unincorporated entities that are contracting for the supply of the Goods and/or Services, and their employees, agents, contractors and sub-contractors.
- 18.4 "Dispute" means a dispute arising out of the Contract in relation to Practical Completion or Final Completion of Services that is in good faith and not frivolous or vexatious.
- 18.5 "Delivery" means the delivery of Goods to the Customer's premises or the nominate carrier's depot.
- 18.6 "Final Completion" means the completion of the incidental items after Practical Completion.
- 18.7 "Force Majeure Event" means an event affecting the party's ability to perform its obligations under this Contract that is outside that party's reasonable control, including without limitation, fire, flood, drought, storm, lightning, act of God, peril of sea or air, explosion, sabotage, accident, embargo, labour dispute or shortage, riot, civil commotion, act of war and war.
- 18.8 "Goods" means items specified in the Order Schedule.
- 18.9 "Non-excludable Condition" means an implied condition or warranty the exclusion of which from a contract (including without limitation a contract with a 'consumer' as defined in the Trade Practices Act 1974) would contravene any statute or cause part or all of the relevant clause to be void.
- 18.10 "Normal Working Hours" the time between 7.30am and 4.30pm Monday to Friday, excluding public holidays in New South Wales.

- 18.11 "Order Schedule" means a written quotation for the supply of Goods and/or Services.
- 18.12 "Practical Completion" means the site is ready for occupancy at the Supplier's discretion but may mean that incidental items such as and is not limited to door hardware, trims and painting are not complete.
- 18.13 "Special Delivery" means an arrangement other than for the delivery of Goods to the Customer's premises or the nominated carrier's depot
- 18.14 "Services" means the services specified in the Order Schedule.
- 18.15 "The Supplier" means M J Woodgate Pty Ltd trading as Unicut and its respective employees, agents, contractors and sub-contractors.