

These Terms and Conditions attached represent the entire agreement between the Parties and supersede any terms and conditions you previously or subsequently provide us with, and any prior agreement, understanding or arrangement between the Parties, whether oral or in writing.

This Proposal is valid and open for acceptance for [30] days. The Terms and Conditions attached are incorporated into this Agreement.

## TERMS AND CONDITIONS

### 1. ACCEPTANCE

1.1 **Parties:** These Terms are between HOPWOODS REPAIRS PTY LTD (ACN 642 580 774) as the Trustee for A & P Hopwood Family Trust trading as Hopwoods Repairs (ABN 64 071 027 603), its successors and assignees (referred to as “**we**”, “**us**” and “**the Company**”) and you, the person, organisation or entity described in the Proposal (referred to as “**you**” and “**the Client**”). These Terms apply to all Services provided by us to you.

1.2 **Acceptance:** You have requested the Services set out in the Proposal. You accept these Terms by:

- (a) signing and returning this Agreement;
- (b) confirming in writing, including by email that you accept the Proposal;
- (c) accepting the Proposal online;
- (d) allowing us to proceed with the Services; or
- (e) making part or full payment for the Services.

1.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

1.4 **You agree that these Terms form the agreement under which we will supply Services to you (Agreement). Please read these Terms carefully.** Please contact us if you have any questions. Purchasing Services from us indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms.

1.5 **Deposit:** If the Proposal indicates that we require a Deposit, we will not commence performing the Services until you have paid the Deposit or the first instalment of our Fee.

1.6 **Cancellation:** You must provide us with at least 5 Business Days’ notice in writing of any cancellation. Failure to do so will result in part of your Deposit being forfeited proportionate to our costs incurred and time spent in providing the Services to you up to the time of cancellation. If no Deposit has been paid, this amount will be payable by you within 7 days of receipt of an invoice for that amount. To the extent permitted by law, if you cancel the Services and we have already ordered materials specific to the Services that must be returned, you will also be required to pay for any return or re-stocking costs on an indemnity basis, payable by you within 7 days of receipt of an invoice for that amount; or if we have already ordered materials specific to the Services that cannot be returned or re-used by us, you will be required to pay for the material costs on an indemnity basis, payable by you within 7 days of receipt of an invoice for that amount. You can collect the materials from us once the invoice is paid in full.

1.7 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these Terms if the Client places an order for or accepts delivery of any Services.

1.8 In the event of any inconsistency between the terms and conditions of this Agreement and any other prior document or schedule that the parties have entered into, the terms of this Agreement shall prevail.

1.9 Any amendment to the terms and conditions contained in this Agreement may only be amended in writing by the consent of both parties.

1.10 Any advice, recommendation, information, assistance or service provided by the Company in relation to Services provided is given in good faith, is based on the Company’s own knowledge and experience and shall be accepted without liability on the part of the Company 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 Services.

### 2. SERVICES

2.1 We agree to perform the Services with due care and skill.

2.2 We reserve the right to refuse any request that we deem inappropriate, unsafe, unreasonable or illegal.

2.3 We may provide the Services to you using our employees, contractors and third-party providers, and they are included in these Terms.

2.4 Third parties who are not our employees or our direct contractors will be your responsibility. We are not responsible for the products or services provided by those third parties.

2.5 Where applicable, the Services’ Start Date will be postponed by whatever time is reasonable in the event that the Company requires an extension of time where completion is delayed by an event beyond the Company’s control, including but not limited to any failure by the Client to:

- (a) make a selection;
- (b) have the Site ready for the Services; or
- (c) notify the Company that the Site is ready.

2.6 **Timeframe:** Any period of time allowed for completion of Services is an estimate only and is subject to change. To the extent permitted by law, we

will not be liable for any delays. Both Parties must take all reasonable steps to minimise any delay to the Services.

2.7 In the event that the supply of Materials specified in this Agreement is disrupted due to unforeseen circumstances, including but not limited to shortages, delays, or unavailability, we reserve the right to replace the specified Materials with materials of the same or greater value and quality without prior notice to you. We will endeavour to notify you as soon as reasonably possible.

### 3. PRICE, INVOICING AND PAYMENT

3.1 You agree to pay us the amounts set out in our Proposal, including any Deposit required.

3.2 All amounts are stated in Australian dollars.

3.3 All amounts exclude Australian GST (where applicable) unless stated otherwise.

3.4 Payment may be made by way of payment methods as set out in our Proposal/invoices when purchasing our Services.

3.5 You agree to pay our Invoices by the payment date set out on the Invoice. If you do not pay by the payment date (including any other services we have provided to you), we may cease to provide the Services to you until we receive payment.

3.6 We may charge interest at a rate equal to the Reserve Bank of Australia’s cash rate from time to time plus 8% per annum, calculated daily and compounding monthly, on any amounts unpaid after the payment date.

3.7 If invoices are unpaid after the payment date, we reserve the right to take steps to recover any outstanding professional fees and outlays owing to us. In the event of non-payment, we have the right to engage debt collection services for the collection of unpaid debts, the right to commence legal proceedings for any outstanding amounts owed to us and the right to take any other adverse action against you as we consider appropriate. If any action is required to recover amounts owing to us (including without limitation issuing and receiving any correspondence, commencing court proceedings, taking enforcement action and so on), you acknowledge and agree that you are liable for and must pay all costs including without limitation debt collection, commission, charges, costs and any out-of-pocket expenses (including all legal costs and legal fees on an indemnity basis and all fees charged by counsel). You agree to indemnify us against any costs we may incur in recovering payment of any unpaid invoices.

3.8 We reserve the right to report bad debts to independent credit data agencies.

3.9 If the Proposal states that the Fees and Expenses are an estimate only, you acknowledge that the final Fees and Expenses may be more or less than the estimated amounts. We will endeavour to inform you of any material variation to Fees and/or Expenses no later than 7 days after it has become apparent that there is a material variation.

3.10 You agree to pay the Call Out Fees where applicable.

### 4. YOUR APPROVALS

4.1 Where we provide you with any approval item, you must notify us in writing whether you do or do not accept the completed approval item by the due date provided to you.

4.2 If we do not receive a response from you by the due date set out on the approval item, you will be deemed to have accepted the approval item.

4.3 Your acceptance of the completed approval item in accordance with this clause 4 means that the approval item is complete, and no further amendments are necessary.

4.4 Where we are unable to proceed to the next stage of the Services until we receive your approval/response, Additional Fees may be incurred where we must reschedule Services, staff or facilitate continuance due to unplanned delays.

### 5. PRICE INCREASES

5.1 Subject to clause 5.2, we have the right to proportionately increase the Fees to cover any reasonably incurred new or increased costs in sourcing Materials and installing the Services under this Agreement. Our determination of these costs shall be deemed final.

5.2 We can only increase the Fees under clause 5.1 if:

- (a) we are not prohibited by law from doing so;
- (b) the proposed Start Date is delayed by more than 30 days due to reasons beyond our control; and
- (c) we give you written notice of the price increase prior to ordering the relevant Materials and before the new proposed Start Date.

5.3 If we give you notice of a price increase and you prefer not to proceed with the services that necessitate the price increase rather than accept the price increase, you may terminate this Agreement only as regards those services by providing written notice to us by the relevant due date set out in our price increase notice to you.

5.4 If you terminate in accordance with clause 5.3, clauses 15.3 to 15.7 apply. As per clause 15.3 you will be liable to pay for all Services performed up until termination, and you agree and acknowledge that we have the right to retain part or all of your Deposit or any payments made,

- including but not limited to costs in relation to any services, products, administration and transport costs.
- 5.5 If we send you notice of a price increase and you do not terminate this Agreement in accordance with clause 5.3 by the relevant due date, you will be taken to have agreed to the price increase. In such cases, you shall remain bound by all other terms of this Agreement.
- 5.6 A price increase will not invalidate these Terms or be regarded as a repudiation of these Terms by us.
- 6. VARIATIONS**
- 6.1 The Fees and Services can be varied by written agreement between us, including by email.
- 6.2 We may at any time, in writing, inform you of the need for us to perform a Variation.
- 6.3 The Company reserves the right to change the Fees:
- if a variation to the Materials which are to be supplied is requested; or
  - if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - where additional services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations (discovery of asbestos, etc.), prerequisite work by any third-party not being completed, change of design etc.) which are only discovered on commencement of the Services.
- 6.4 If you request a Variation to the Services, we have discretion as to whether we make the Variation.
- 6.5 Variations will not invalidate these Terms or be regarded as a repudiation of these Terms by us.
- 6.6 If in our reasonable opinion a Variation requires additional time to perform the Services, then we will amend the term of this Agreement after consultation with you.
- 6.7 If we need to charge an additional fee for a Variation (**Additional Fee**), then we will provide a written quote for the Additional Fee to you prior to commencing performance of the Variation. If:
- You accept the quote then these Terms are amended to incorporate the Variation and the Additional Fee but otherwise remains the same; or
  - You do not accept the quote we may in our discretion terminate these Terms immediately.
- 6.8 If we are unable to accommodate the Variation, we may request that we be paid for Services performed to date and terminate these Terms.
- 7. YOUR OBLIGATIONS AND WARRANTIES**
- 7.1 You warrant that:
- there are no legal restrictions preventing you from agreeing to these Terms;
  - you will cooperate with us, and provide us with information that is reasonably necessary to enable us to perform the Services as requested from time to time, in a timely manner, including but not limited to providing any finalised plans/designs, appliance or materials details where required;
  - the information you provide to us is true, correct and complete;
  - you will at all times comply with our Requirements;
  - you will not infringe any third-party rights in working with us and receiving the Services;
  - before attempting to resolve any issues yourself or using a third-party, you will inform us if you have reasonable concerns relating to our provision of Services under these Terms, with the aim that the Parties will use all reasonable efforts to resolve your concerns;
  - you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions;
  - you will ensure that, if the Services are to be performed on a property, you are authorised to occupy the premises and obtain the Services and upon request you must be able to provide evidence of written consent from the property owner showing that they have consented to the Services being performed by us;
  - you will ensure that if the Services are to be performed on a property, that at all times the property is safe and that all facilities provided by you for the purposes of enabling the Services to be performed are also safe;
  - you will ensure that we have free and unimpeded access to the place in which the Services are to take place and that you will do all things to ensure that we are not delayed by matters within your control;
  - where you have supplied Materials for us to be able to complete the Services, we accept no responsibility for the suitability of purpose, quality and any faults inherent in the Materials. The Company shall not be responsible for any defects in the Services, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of Materials supplied by you;
  - we are not responsible for the removal of rubbish from or clean-up of the Site, building/constructions site/s. This is the responsibility of you or your agent, unless otherwise agreed between parties at

- the time of quotation. Under no circumstances will the Company handle removal of asbestos product;
- you accept that we have the right to impose stand down charges and recover additional costs incurred where work is delayed by reason not in our control and where are unable to reasonably reschedule services;
  - you will not employ, canvass, solicit, entice, induce or attempt to employ our employees or contractors; and
  - where requested by us, you will cause your directors and/or shareholders to sign and return the Personal/Directors Guarantee.
- 8. RISK**
- 8.1 Risk of damage to or loss of the goods passes to you on delivery to your premises and you must insure the goods on or before delivery.
- 8.2 If any of the goods are damaged, lost or destroyed following delivery but prior to title passing to you, we are entitled to receive all insurance proceeds payable for the goods. The production of these Terms by us is sufficient evidence of our rights to receive the insurance proceeds without the need for any person dealing with us to make further enquiries.
- 8.3 If you request that we deliver the goods to an unattended location, then such goods shall be left at your sole risk.
- 8.4 You acknowledge that goods supplied may:
- fade or change colour over time;
  - expand, contract or distort as a result of exposure to heat, cold, weather;
  - mark or stain if exposed to certain substances; and
  - be damaged or disfigured by impact or scratching.
- 8.5 The Company may at its discretion notify the Client that it requires to store at the Site plant and tools required for the Services, in which event the Client shall supply the Company a safe area for storage and shall take all reasonable efforts to protect all items so stored from possible destruction, theft or damage. In the event that any such items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Client's responsibility.
- 9. RETENTION OF TITLE**
- 9.1 Title in any goods we supply to you does not pass to you until they have been paid for in full, even if we have installed them.
- 9.2 To the extent allowed by law, if you fail to make a due payment, we may enter the site or your premises and take reasonable action to remove the goods without us being liable to you for damage to the site, premises or the goods caused by such removal.
- 10. WORK HEALTH & SAFETY**
- 10.1 You agree and acknowledge that:
- whilst works are being carried out the Site is considered a work site and therefore must comply with all legislation and must follow the following conditions;
  - an approximate age of the property must be advised to ascertain potential risk;
  - disclosure of the presence of asbestos, where known by you, within the work Site must be made prior to the commencement of works;
  - all work areas must be accessible and free of potential hazard to us and any of our representatives; and
  - any representative of ours can refuse to complete the Services if they believe that the working environment is in breach of this clause, our company policy and/or legislation.
- 11. OUR INTELLECTUAL PROPERTY**
- 11.1 We own the intellectual property rights in:
- our pre-existing Intellectual Property, including but not limited to copyright which subsists in all creative and literary works incorporated into our pre-existing Intellectual Property; and
  - Intellectual Property that we create during the course of the Services, including but not limited to copyright which subsists in all creative and literary works in all Intellectual Property that we create during the course of the Services; unless we assign or transfer this to you. This Intellectual Property is protected by Australian and international laws.
- 11.2 Nothing in these Terms constitutes an assignment or transfer of our Intellectual Property rights, or a right to use our Intellectual Property, whether registered or unregistered, except as stated in these Terms or with our written permission.
- 11.3 You must not breach our intellectual property rights by, including but not limited to:
- altering or modifying our Intellectual Property;
  - creating derivative works from the Intellectual Property; or
  - using our Intellectual Property for commercial purposes such as on-sale to third parties.
- 11.4 This clause will survive the termination of these Terms.
- 12. CONFIDENTIAL INFORMATION**
- 12.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third-party (other than where necessary, to third-party suppliers, or as required by law); to use all reasonable endeavours to protect your Confidential Information from any unauthorised disclosure; and only to use your Confidential Information for the purpose for which it was disclosed by you, and not for any other purpose.

- 12.2 You, including your employees and contractors, agree not to disclose our Confidential Information to any third-party; to use all reasonable endeavours to protect our Confidential Information from any unauthorised disclosure; and only to use our Confidential Information for the purpose for which it was disclosed or provided by us to you, to provide better quality services to you and not for any other purpose.
- 12.3 These obligations do not apply to Confidential Information that:
- is authorised to be disclosed;
  - is in the public domain and/or is no longer confidential, except as a result of a breach of these Terms;
  - is received from a third-party, except where there has been a breach of confidence; or
  - must be disclosed by law or by a regulatory authority including under subpoena.
- 12.4 This clause will survive the termination of these Terms.
- 13. FEEDBACK AND DISPUTE RESOLUTION**
- 13.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact us.
- 13.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:
- The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them at an initial meeting.
  - If the Parties cannot agree how to resolve the dispute at that initial meeting, any Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, the complainant will ask the Law Society of Victoria to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.
- 13.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.
- 14. WARRANTIES**
- 14.1 We may provide you with a warranty for our workmanship for the duration set out in the Proposal from the date of practical completion (**Our Warranty**).
- 14.2 Our Warranty shall only be valid on the Services as carried out by us.
- 14.3 If in our reasonable discretion we deem that our work has been tampered/modified by a third party, this will void Our Warranty.
- 14.4 If in our reasonable discretion we deem that there has been any relocation of the equipment or modification to the utilities that supply the equipment, this will void Our Warranty.
- 14.5 Ground subsidence, building movement and tree roots lifting/moving the pipework may also void Our Warranty.
- 14.6 In order to claim Our Warranty you must provide the original invoice for proof of Services.
- 14.7 For products not manufactured by us, the warranty shall be the warranty provided by the manufacturer. To the extent permitted by law, we shall be under no liability whatsoever in respect of products not manufactured by us.
- 14.8 We take no responsibility for materials supplied by you.
- 14.9 Our Warranty is only valid where you have complied with these Terms.
- 14.10 Our Services come with guarantees that cannot be excluded under Australian Consumer Law. For major failures with the Services, you are entitled to:
- cancel these Terms with us; and
  - a refund for the unused portion, or reimbursement for its reduced value.
- 14.11 You are also entitled to be reimbursed for any other reasonably foreseeable loss or damage.
- 14.12 If the failure does not amount to a major failure, you are entitled to have problems with the Services rectified in a reasonable time and, if this is not done, to cancel the Terms and obtain a refund for the unused portion of the Terms.
- 15. TERM AND TERMINATION**
- 15.1 If either Party commits a remediable breach of these Terms and does not remedy the breach at its cost within a reasonable time after receiving written notice of the breach from the other Party, then the Parties agree to engage in the dispute resolution process set out in clause 13.2 in the first instance. If the dispute is not resolved after following that process, then either Party may terminate these Terms at any time upon written notice to the other Party.
- 15.2 We may terminate these Terms immediately upon written notice to you, if:
- you commit a non-remediable breach of these Terms;
  - you fail to provide us with clear or timely instructions to enable us to provide the Services;
  - we, acting reasonably, consider that our working relationship has broken down including a loss of confidence and trust;
  - for any other reason outside our control which has the effect of compromising our ability to perform the Services within the required timeframe; or
  - you fail to pay an invoice by the due date.
- 15.3 You may terminate these Terms immediately upon written notice to us if:
- we commit a non-remediable breach of these Terms; or
  - you, acting reasonably, consider that our working relationship has broken down including a loss of confidence or trust.
- 15.4 On termination of these Terms in accordance with clause 15.2 or clause 15.3 you agree that any Deposit or payments made are not refundable to you to the extent of all Services provided prior to termination, including Services which have been performed and have not yet been invoiced to you.
- 15.5 On termination of these Terms, you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and/or Intellectual Property.
- 15.6 On termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and/or Intellectual Property.
- 15.7 On completion of the Services, we will retain your documents related to the provision of the Services to you (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
- 15.8 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 16. INSOLVENCY**
- 16.1 If either Party:
- being a person, becomes bankrupt or makes an assignment of its estate for the benefit of its creditors; or
  - being a company, becomes insolvent, has a liquidator, provisional liquidator, administrator or receiver appointed or takes or has taken or instituted against it any action which may result in the liquidation of the company or if it enters into any Subcontract with its creditors,
- the other Party may, without issuing a notice to show cause, terminate the Agreement by written notice.
- 17. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS**
- 17.1 **Service Standard:** We will provide the Services with due care and skill, the Services will be fit for the purpose that we advertise, and we will supply the Services within a reasonable time.
- 17.2 **ACL:** Certain legislation including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth) and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**).
- 17.3 **Statutory Rights:** Nothing in these Terms excludes your Statutory Rights as a consumer under the ACL. You agree that our liability for the Services is governed solely by the ACL and these Terms.
- 17.4 **Warranties:**
- Except for your Statutory Rights and Our Warranty, we exclude all express and implied warranties representations and guarantees and all material and work is provided to you without warranties, representations and guarantees of any kind.
  - Our Services may come with guarantees that cannot be excluded under Australian Consumer Law. For major failures with the Services, you are entitled to:
    - cancel these Terms with us, and
    - a refund for the unused portion, or reimbursement for its reduced value.
  - You are also entitled to be reimbursed for any other reasonably foreseeable loss or damage.
  - If the failure does not amount to a major failure, you are entitled to have problems with the Service rectified in a reasonable time and, if this is not done, to cancel the Terms and obtain a refund for the unused portion of the Terms.
  - For products not manufactured by us, the warranty shall be the current warranty provided by the manufacturer.
- 17.5 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services, where it is affected by your delay in response or supply of incomplete or incorrect information.
- 17.6 **Referrals:** We may provide you with contact details of third-party specialists. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third-party advice or provision of services, and we disclaim all responsibility and liability for the third-party advice or provision of services, or their failure to advise or provide services.
- 17.7 **Availability:** To the extent permitted by law, we exclude liability for:
- the Services being unavailable; and
  - any Claims for loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation or any loss or damage relating to business interruption or otherwise, suffered by you or made against you, arising out of or in connection with your inability to access or use the Services or the late supply of Services, even if

- we were expressly advised of the likelihood of such loss or damage.
- 17.8 **Disclaimers:** To the extent permitted by law we disclaim all responsibility and liability for:
- (a) products or services you purchase from a third-party;
  - (b) damage caused to property other than due to our negligent act or omission, including but not limited to any damage caused to flooring and/or cabinetry;
  - (c) any pre-existing or future errors, faults, defects or damage that are unrelated to the provisions of our Services. These will not be covered under Our Warranty;
  - (d) personal injury caused to you or any third-party other than due to our negligent act or omission;
  - (e) any faults in work performed by us that have been tampered with, serviced or worked on by a third-party. This will void Our Warranty;
  - (f) any damage caused where you have failed to provide us with any necessary plans, appliance or material information;
  - (g) any variations in materials from any samples or online representations;
  - (h) any underground services damage other than due to our negligent act or omission;
  - (i) naturally occurring damage, ageing and discolouration of stone;
  - (j) any inaccuracies as a result of incorrect information, measurements or plans provided to us;
  - (k) any Additional Fees incurred that are not set out in the scope of Services, including but not limited to relocating appliances or equipment;
  - (l) any Additional Fees incurred due to a change to the scope of Services;
  - (m) any Additional Fees incurred due to unforeseen variations that we could not have reasonably anticipated including but not limited to material or labour cost increases;
  - (n) any delays due to reasons out of our control, including but not limited to inclement weather and material delays and shortages;
  - (o) any make safe work performed is temporary and will need to be repaired properly at the earliest convenience;
  - (p) any damage due to exposure to the elements e.g. salt, wind, water, weather conditions, flash flooding etc.;
  - (q) any damage caused by animals and/or pests;
  - (r) naturally occurring damage, ageing and discolouration; and
  - (s) any loss or damage to the Site (including, without limitation, damage to pathways, driveways and concreted, paved or grassed areas, ceiling tiles and panels, face brickwork and rendered masonry services) unless due to the negligence of the Company.
- 17.9 **Limitation:** To the extent permitted by law, our total liability arising out of or in connection with the Services, however arising, including under contract, tort including negligence, in equity, under statute or otherwise, is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates. Our total liability to you for all damages in connection with the Services will not exceed the price paid by you under these Terms and pursuant to the Proposal for the 12-month period prior to the act which gave rise to the liability, or one hundred dollars (AUD\$100) if no such payments have been made.
- 17.10 This clause will survive the termination of these Terms.
18. **INDEMNITY**
- 18.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
- (a) any information provided by you to us that was not accurate, up to date or complete or was misleading or a misrepresentation;
  - (b) your breach of these Terms;
  - (c) any misuse of the Services by you, your employees, contractors or agents; and
  - (d) your breach of any law or third-party rights.
- 18.2 We are liable for and agree to indemnify, defend and hold harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
- (a) any information provided to you by us that was not accurate, up to date or complete or was misleading or a representation;
  - (b) our breach of these Terms;
  - (c) any defect or omission in the Services from or by us, our employees, contractors or agents; and
  - (d) our breach of any law or third-party rights in connection with our provision of the Services to you.
- 18.3 The Parties agree to co-operate with each other (at their own expense) in the handling of disputes, complaints, investigations or litigation that arises as a result of these Terms.
- 18.4 This clause will survive the termination of these Terms.
19. **GENERAL**
- 19.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.
- 19.2 **Publicity:** You consent to us stating that we provided Services to you, including but not limited to taking photographs/videos of our work and mentioning you on our website, social media platforms and in our promotional material. You also provide us with permission to display signage on site while Services are taking place.
- 19.3 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
- 19.4 **GST:** If and when applicable, GST payable on the Fee for the Services will be set out on our invoices. You agree to pay the GST amount at the same time as you pay the Fee.
- 19.5 **Relationship of Parties:** These Terms are not intended to create a relationship between the Parties of partnership, joint venture, or employer-employee.
- 19.6 **Assignment:** We may assign or transfer these Terms and assign its rights and delegate its obligations. You shall not assign these Terms, whether by merger, consolidation, operation of law or otherwise, and any attempt to do so without our prior written consent shall be null and void. These Terms shall inure to the benefit of and be binding upon any successor or permitted assign of the Parties. Notwithstanding anything to the contrary herein, we may engage subcontractors to perform any of its obligations under these Terms. Use of a subcontractor will not release us from liability under these Terms for performance of the subcontracted obligations. Without limiting the generality of the foregoing, we may assign these Terms and the rights relating to payment for sales made under these Terms without your consent and, notwithstanding any confidentiality obligations, may provide any purchaser of any such rights information and documents reasonably related to such sales, provided such purchaser has a confidentiality agreement in place with us that precludes disclosure of any your Confidential Information to any third-party without your consent.
- 19.7 **Severance:** To the extent permitted by law, if any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.
- 19.8 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control.
- 19.9 **Notices:** Any notice required or permitted to be given by either Party to the other under these Terms will be in writing addressed to the relevant address in the Proposal. Any notice may be sent by standard post or email, and notices will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 19.10 **Jurisdiction & Applicable Law:** These terms are governed by the laws of Victoria and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria.
- 19.11 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between the Parties and supersede any prior agreement, understanding or arrangement between the Parties, whether oral or in writing.
- 19.12 **Special Conditions:** The Special Conditions will prevail to the extent of any inconsistency with these Terms.
20. **DEFINITIONS**
- 20.1 **Call Out Fees** (if any) are set out in the Proposal.
- 20.2 **Claim/Claims** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute, whether indirect, incidental, special, consequential and/or incidental, and whether involving a third-party or a Party to the Terms or otherwise.
- 20.3 **Confidential Information** includes confidential information about you, your credit card or payment details, and the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, technology, and other information of either Party whether or not such information is reduced to a tangible form or marked in writing as "confidential".
- 20.4 **Deposit** (if any) set out in the Proposal.
- 20.5 **Expenses** (if any) are set out in the Proposal.
- 20.6 **Fees** are set out in the Proposal.

- 20.7 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.
- 20.8 **Intellectual Property** includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), patents, improvements, registered and unregistered trademarks, designs, any corresponding property rights under the laws of any jurisdiction, discoveries, circuit layouts, trade names, trade secrets, secret processes, know-how, concepts, ideas, information, processes, data or formulae, business names, company names or internet domain names, and any Confidential Information.
- 20.9 **Materials** means the materials referred to in the scope of Services set out in the Proposal.
- 20.10 **Party** and **Parties** means a party or parties to these Terms.
- 20.11 **Personal/Directors Guarantee** means the Personal/Directors Guarantee attached at Annexure A
- 20.12 **Proposal** means the proposal to which these Terms are attached including any verbal quote given at the time of booking, including but not limited to any hourly rates and fees published on our website or otherwise.
- 20.13 **Requirements** means any instructions, directions, care guidelines or other instructional information provided by the manufacturer of the Materials or to you by us.
- 20.14 **Services** are set out in the Proposal.
- 20.15 **Site** means the Site where the Services are to be performed, which may be detailed in the Proposal.
- 20.16 **Special Conditions** means the special conditions, if any, detailed in the Proposal.
- 20.17 **Start Date** means the start date (if any) detailed in the Proposal.
- 20.18 **Terms** means these terms and conditions.
- 20.19 **Variation** means:
- (a) when advised by us to you, necessary amended or additional services, including but not limited to changes to the Proposal, Services, Fees or Expenses; or
  - (b) amended or additional services as requested by you.