



CLIENT INFORMATION FORM

Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

Client's Details: <input type="radio"/> Individual <input type="radio"/> Sole Trader <input type="radio"/> Trust <input type="radio"/> Partnership <input type="radio"/> Company <input type="radio"/> Other:		
Full or Legal Name:		
Physical Address:	State:	Postcode:
Billing Address:	State:	Postcode:
Email Address:		
Phone No:	Mobile No:	
Personal Details: <i>(please complete if you are an Individual)</i>		
D.O.B.	Driver's Licence No:	
Business Details: <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>		
Trading Name:		
ABN:	ACN:	Date Established <i>(current owners)</i> :
Contact Person:	Phone No.	
Nature of Business:		
Directors / Owners / Trustee: <i>(if more than two, please attach a separate sheet)</i>		
(1) Full Name:		
Director Identification No:	D.O.B.	
Private Address:	State:	Postcode:
Driver's Licence No:	Phone No:	Mobile No:
(2) Full Name:		
Director Identification No:	D.O.B.	
Private Address:	State:	Postcode:
Driver's Licence No:	Phone No:	Mobile No:

I certify that the above information is true and correct and that I accept the supply of credit by the Contractor *(if applicable)*. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Neicho Pty Ltd T/A Align Asphalt Paving which form part of and are intended to be read in conjunction with this Client Information Form and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein.

SIGNED (CLIENT): _____ SIGNED (CONTRACTOR): _____

Name: _____ Name: _____

Position: _____ Position: _____

Date: _____ Date: _____

OFFICE USE ONLY		
Account / Ref. No.	DATA INPUTTED	DATE
		/ /

Neicho Pty Ltd T/A Align Asphalt Paving – Terms & Conditions of Trade

1.	Definitions	7.	Price and Payment	10.	Site Access and Condition
1.1	"Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Contractor to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and: (a) if there is more than one Client, is a reference to each Client jointly and severally; and (b) if the Client is a partnership, it shall bind each partner jointly and severally; and (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and (d) includes the Client's executors, administrators, successors and permitted assigns.	7.1	At the Contractor's sole discretion, the Price shall be either: (a) as indicated on invoices provided by the Contractor to the Client in respect of Works performed or upon placement if an order for the Materials/Equipment; or (b) the Contractor's quoted Price (subject to clause 7.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.	10.1	The Contractor is not responsible for the removal of rubbish from or clean-up of the building/construction Site/s. All rubbish generated by the Contractor will be placed in a designated area appointed by the Client but the responsibility of removal of same is the Client or the Client's agent, unless otherwise agreed.
1.2	"Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, Contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.	7.2	The Contractor reserves the right to change the Price: (a) if a variation to the Works originally scheduled and/or Equipment/Materials which are to be supplied (including any applicable plans or specifications) is requested; or (b) where additional Works are required due to the discovery of hidden or unidentified difficulties (including, but not limited to, poor weather, limitations to accessing the Site, obscured building/Site defects, incorrect measurements, plans and/or specifications provided by the Client, prerequisite work by any third party not being completed, hard rock barriers below the surface, iron reinforcing rods in concrete or hidden pipes, etc.) which are only discovered on commencement of the Works; or (c) in the event of increases to the Contractor in the cost of labour or Materials which are beyond the Contractor's control.	10.2	(a) The intention of the Contractor and agreed by the Client that: the Client shall ensure that the Contractor has clear and free access to the Site at all times to enable them to undertake the Works (including carrying out Site inspections, gain signatures for required documents, and for the delivery and installation of the Materials). The Contractor 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 Contractor; (b) such access shall be suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by the Contractor. The Client shall pay the cost of replacement, repair or rectification to any paths, driveways, and access routes to the property; and (c) it is the Client's responsibility to provide the Contractor, while at the Site, with adequate access to available amenities as may be required.
1.3	"Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.	7.3	Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Client shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor 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.	10.3	The Client shall supply an area suitable for washing out the Contractor's equipment and for depositing all unused concrete and slurry.
1.4	"Contractor" means Neicho Pty Ltd T/A Align Asphalt Paving, its successors and assigns or any person acting on behalf of and with the authority of Neicho Pty Ltd T/A Align Asphalt Paving.	7.4	At the Contractor's sole discretion, a reasonable non-refundable deposit may be required upon placement of an order for Materials/Equipment/Works, in accordance with any quotation provided by the Contractor or as notified to the Client prior to the placement of an order for Materials/Equipment/Works.	10.4	Where the Contractor requires that Materials, tools etc. required for the Works be stored at Worksite, the Client shall supply the Contractor a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.
1.5	"Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when using the Contractor's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.	7.5	Time for payment for the Works/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be: (a) the date specified on any invoice or other form as being the date for payment; or (b) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by the Contractor.	10.5	The Client agrees to be present at the Site when and as reasonably requested by the Contractor and its employees, contractors and/or agents.
1.6	"Equipment" means all Equipment including any accessories supplied on hire by the Contractor to the Client (and where the context so permits shall include any supply of Works). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Contractor to the Client.	7.6	Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (a surcharge per card payment may apply), or by any other method as agreed to between the Client and the Contractor.	10.6	Site Inductions (a) in the event the Client requires an employee or sub-contractor of the Contractor to undertake a Site induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to pay the Contractor's standard (and/or overtime, if applicable) hourly labour rate; or (b) where the Contractor is in control of the Site, the Client and/or the Client's third party contractors must initially carry out the Contractor's Health & Safety induction course before access to the Site will be granted. Inspection of the Site during the course of the Works will be by appointment only and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by the Contractor.
1.7	"GST" means Goods and Services Tax as defined within the 'A New Tax System (Goods and Services Tax) Act 1999' (Cth).	7.7	The Contractor may in its discretion allocate any payment received from the Client towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Contractor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Contractor, payment will be deemed to be allocated in such manner as preserves the maximum value of the Contractor's Purchase Money Security Interest (as defined in the PPSA) in the Materials.	11.	Underground Locations
1.8	"Price" means the Price payable (plus any GST where applicable) for the Works and/or Equipment hire as agreed between the Contractor and the Client in accordance with clause 7 below.	7.8	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 Contractor nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify the Contractor in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Contractor investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Contractor placing the Client's account into default and subject to default interest in accordance with clause 18.1.	11.1	Prior to the Contractor commencing any work the Client must advise the Contractor of the precise location of all underground services on the Site and clearly mark the same. The underground mains and 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.
1.9	"Site" means the address nominated by the Client to which the Materials/Works are to be supplied by the Contractor and/or where the Equipment is to be located.	7.9	Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply of Works/Equipment by the Contractor under this or any other agreement. 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.	11.2	Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 11.1.
2.	Acceptance	8.	Provision of the Works	12.	Compliance with Laws
2.1	The parties acknowledge and agree that: (a) they have read and understood the terms and conditions contained in this Contract; and (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Works/Equipment.	8.1	Subject to clause 8.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.	12.1	The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any occupational health and safety (OHS) laws relating or any other relevant safety standards or legislation pertaining to the Works. Both parties acknowledge and agree: (a) to comply with the National Construction Code of Australia (NCC) and the Building Act 1993, in respect of all workmanship and building products to be supplied during the course of the Works; and (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
2.2	In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.	8.2	The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor'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 Contractor that the Site is ready.	12.2	Where the Client has supplied products for the Contractor to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the intended use and any faults inherent in those products. However, if in the Contractor's opinion, it is believed that the materials supplied are non-conforming products and will not conform with state and/or territory regulations, then the Contractor shall be entitled, without prejudice, to halt the Works until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be incurred in accordance with clause 7.2.
2.3	Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.	8.3	The cost of delivery will be payable by the Client in accordance with the quotation provided by the Contractor to the Client, or as otherwise notified to the Client prior to the placement of an order for the Materials/Equipment/Works.	12.3	The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
2.4	The Client acknowledges and accepts that the supply of Works on credit shall not take effect until the Client has completed a credit application with the Contractor and it has been approved with a credit limit established for the account.	8.4	The Contractor may deliver the Works/Equipment by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.	13.	Title to Materials
2.5	In the event that the supply of Works requested exceeds the Client's credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery.	8.5	Any time specified by the Contractor for delivery of the Works/Equipment is an estimate only and the Contractor 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/Equipment to be supplied at the time and place as was arranged between both parties. In the event that the Contractor is unable to supply the Works/Equipment as agreed solely due to any action or inaction of the Client, then the Contractor shall be entitled to charge a reasonable fee for resupplying the Works/Equipment at a later time and date, and/or for storage of the Equipment/Materials.	13.1	The Contractor and the Client agree that ownership of the Materials shall not pass until: (a) the Client has paid the Contractor all amounts owing to the Contractor; and (b) the Client has met all of its other obligations to the Contractor.
2.6	Any advice, recommendation, information, assistance, or service provided by the Contractor in relation to the Materials or Works supplied is given in good faith to the Client, or the Client's agent and is based on the Contractor's own knowledge and experience and shall be accepted without liability on the part of the Contractor. Where such advice or recommendations are not acted upon then the Contractor shall require the Client or their agent to authorise commencement of the Works in writing. The Contractor shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works. 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.	9.	Risk	13.2	Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
3.	Authorised Representatives	9.1	If the Contractor retains ownership of the Materials under clause 13 then: (a) where the Contractor 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; and (b) where the Contractor is to both supply and install Materials then the Contractor shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.	13.3	It is further agreed that: (a) until ownership of the Materials passes to the Client in accordance with clause 13.1 that the Client is only liable for the Materials and unless the Materials have become fixtures must return the Materials to the Contractor on request; (b) the Client holds the benefit of the Client's insurance of the Materials on trust for the Contractor and must pay to the Contractor 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 Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor 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 Contractor and must pay or deliver the proceeds to the Contractor on demand; (e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as its so directs; (f) unless the Materials have become fixtures the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials; (g) the Contractor 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 Contractor; and (i) the Contractor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
3.1	Unless otherwise limited as per clause 3.2, the Client agrees that should the Client introduce any third party to Contractor as the Client's duly authorised representative, that once introduced that person shall have the full authority to act on behalf of the Client under this Contract; such authority shall continue until the time that the Client notifies Contractor otherwise that the said person is no longer the Client's duly authorised representative.	9.2	Notwithstanding the provisions of clause 9.1 if the Client specifically requests the Contractor to leave Materials outside the Contractor'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.	14.	Personal Property Securities Act 2009 ("PPSA")
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 Contractor in writing of the parameters of the limited authority granted to that authorised representative.	9.3	The Contractor 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 Contractor accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.	14.1	In this clause financing statement, financing change statement, security agreement, and security interest have the meaning given to it by the PPSA.
3.3	The Client specifically acknowledges and accepts that they will be solely liable to Contractor for all additional costs incurred by Contractor (including Contractor's profit margin) in providing Works and/or Materials requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).	9.4	The Client acknowledges and accepts that variations of colour and texture are inherent in concrete and asphalt. The Contractor shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture between different batches of product.	14.2	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/Equipment and/or collateral (account) – being a monetary obligation of the Client to the Contractor for Works – that have previously been supplied and that will be supplied in the future by the Contractor to the Client.
4.	Errors and Omissions	9.5	Detailed drawings of any services that will be embedded in the concrete or asphalt are to be provided to the Contractor prior to commencement of any Works. Whilst all due care will be taken no liability will be accepted by the Contractor for damage to the services or any other element embedded in the concrete or asphalt.	14.3	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 Contractor 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 14.3(a)(i) or 14.3(a)(ii).
4.1	The Client acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s): (a) resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this Contract; and/or (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Works.	9.6	The Contractor gives no guarantee (expressed or implied) as to the length of time the curing process will take and/or against cracking of the concrete or asphalt that may occur naturally in the Works such as: (a) hairline cracking of paving and grout; or (b) damage caused by contact with chemicals, solvents, oils or any other substances; or (c) the affects by elements such as heat exposure or wet weather conditions that prolong the curing process.	14.3	(b) indemnify, upon demand reimburse, the Contractor 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/Equipment charged thereby;
4.2	In circumstances where the Client is required to place an order for Materials, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Materials (whether they are made to order Materials or not) ("Client Error"). The Client must pay for all Materials it orders from the Contractor notwithstanding that such Materials suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take delivery of such Materials. The Contractor is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.	9.7	The Client acknowledges and agrees that it is their responsibility to organise and be liable for all costs associated with protecting the concrete or asphalt and shall take all reasonable precautions to protect against destruction or damage by way of vandalism. In the event that the concrete or asphalt is destroyed or damaged due to vandalism then the cost of repair or replacement shall be borne by the Client. The Contractor shall not be liable for any defect in the Works if the Client does not follow the Contractor's recommendations, including: (a) to water the concrete or asphalt periodically to limit the risk of possible cracking due to weather conditions; (b) that no foot traffic and/or any vehicles be permitted on the concrete or asphalt for a minimum of forty-eight (48) hours but preferably seven (7) days; (c) that no heavy items are placed on the concrete or asphalt area for a minimum of twenty-four (24) hours.		
5.	Change in Control	9.8			
5.1	The Client shall give the Contractor 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, change of trustees, or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.				
6.	Credit Card Information				
6.1	The Contractor will: (a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by the Contractor; (b) not disclose the Client's credit card details to any third party; and (c) not unnecessarily disclose any of the Client's personal information, except in accordance with the Privacy Act (clause 20) or where required by law.				
6.2	The Client expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due and outstanding by the Client, any Equipment (or any part of them) supplied on hire that are lost or damaged or any other additional charges are due from the Client which were not known at the time of the return of the Equipment, the Contractor is entitled to immediately charge the Client's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Client pursuant to the terms of this Contract.				

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	(c) not register a financing charge statement in respect of a security interest without the prior written consent of the Contractor.				
	(d) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Materials/Equipment and/or collateral (account) in favour of a third party without the prior written consent of the Contractor; and	18.3			
	(e) immediately advise the Contractor 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.	18.4			
14.4	The Contractor and the Client agree that sections 96, 115 and 125 of the PSPSA do not apply to the security agreement created by these terms and conditions.				
14.5	The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PSPSA.				
	The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PSPSA.				
14.7	Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 157 of the PSPSA.				
14.8	The Client shall unconditionally ratify any actions taken by the Contractor under clauses 14.2 to 14.5.				
14.9	Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PSPSA.				
14.10	Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 14 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PSPSA, in all other matters this clause 14 will apply generally for the purposes of the PSPSA.				
15.	Security and Charge				
15.1	In consideration of the Contractor agreeing to provide the Works/Equipment, the Client grants the Contractor a security interest by way of a floating charge (registrable by the Contractor pursuant to the PSPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client and owned by the Client in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Works/Equipment under this Contract and/or permit the Contractor to appoint a receiver to the Client in accordance with the Corporations Act 2001 (Cth).				
15.2	The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.				
15.3	In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 13.1, 14.2 and 15.1 as applicable, is deemed insufficient by the Contractor to secure the repayment of monies owed by the Client to the Contractor, the Client hereby grants the Contractor a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money.				
16.	Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")	20.			
16.1	The Client must inspect all Materials/Equipment on delivery (or the Works on completion) and must within thirty (30) days of delivery notify the Contractor 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/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Contractor to inspect the Materials/Equipment or to review the Works provided.	20.1			
16.2	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).				
16.3	The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.				
16.4	Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works/Equipment. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.	20.2			
16.5	If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.				
16.6	If the Contractor is required to replace any Materials under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Client has paid for the Materials.				
16.7	If the Contractor 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 Contractor 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 must be defective.				
16.8	If the Client is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Materials is:	20.3			
	(a) limited to the value of any express warranty or warranty card provided to the Client by the Contractor at the Contractor's sole discretion;				
	(b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Materials; and/or				
	(c) otherwise negated absolutely.	20.4			
16.9	Subject to this clause 16, returns will only be accepted provided that:				
	(a) the Client has complied with the provisions of clause 16.1; and				
	(b) the Contractor 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.				
16.10	Notwithstanding clauses 16.1 to 16.9 but subject to the CCA, the Contractor 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;	20.5			
	(b) the Client using the Materials for any purpose other than that for which they were designed;	20.6			
	(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 Contractor's prior approval;				
	(e) the Client failing to follow any instructions or guidelines provided by the Contractor and/or				
	fair wear and tear, any accident, or act of God.				
16.11	The Contractor may in its absolute discretion accept non-defective Materials for return in which case the Contractor may require the Client to pay handling fees of up to ten percent (10%) of the value of the returned Materials plus any freight costs.	20.7			
16.12	Notwithstanding anything contained in this clause if the Contractor is required by a law to accept a return then the Contractor will only accept a return on the conditions imposed by that law.				
16.13	Subject to clause 16.1, customised, or non-stocklist items or Materials made or ordered to the Client's specifications are not acceptable for credit or return.	20.8			
17.	Intellectual Property				
17.1	Where the Contractor has designed, drawn, written plans or a schedule of Works, or created any Materials for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Contractor, and shall only be used by the Client at the Contractor's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.				
17.2	The Client warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.				
17.3	The Client agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or Materials which the Contractor has created for the Client.				
18.	Default and Consequences of Default				
18.1	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 Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.	20.9			
18.2	If the Client owes the Contractor any money, the Client shall indemnify the Contractor from and against all costs and disbursements:				
	(a) incurred; and/or				
	(b) which would be incurred and/or	20.10			
	for which by the Client would be liable;				
	in regard to legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under these terms and conditions, internal administration fees, the Contractor's Contract fees owing for breach of these terms and conditions',				
	including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.		20.11		
	Further to any other rights or remedies the Contractor may have under this Contract, if a Client has made payment to the Contractor, 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 Contractor under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.				
	Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:				
	(a) any money payable to the Contractor becomes overdue, or in the Contractor'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 Contractor;				
	(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.				
	Cancellation	19.			
	Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("the Breaching Party") the other party may suspend or terminate the supply or purchase of Equipment, Materials and/or Works to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party shall be liable for any costs associated with a party suspending/cancelling the Contract under this clause 19.1.	19.1			
	If the Contractor, due to reasons beyond the Contractor's reasonable control, is unable to deliver any Equipment, Materials and/or Works to the Client, the Contractor may cancel any Contract to which these terms and conditions apply or cancel Delivery of the Equipment, Materials and/or Works at any time before the Equipment, Materials and/or Works are delivered by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any money paid by the Client for the Equipment, Materials and/or Works. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.				
	The Client may cancel delivery of the Equipment, Materials and/or Works by written notice served within forty-eight (48) hours of placement of the order. If the Client cancels delivery in accordance with this clause 18.3, the Client will not be liable for the payment of any costs of the Contractor, except where a deposit is payable in accordance with clause 7.4. Failure by the Client to otherwise accept delivery of the Equipment, Materials and/or Works shall place the Client in breach of this Contract. Cancellation of orders for Materials 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.				
	Privacy Policy				
	All emails, documents, images or other recorded information held or used by the Contractor is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. The Contractor acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIIC of the Act being the Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDP) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Contractor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Contractor that may result in serious harm to the Client, the Contractor will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.				
	Notwithstanding clause 20.1, privacy limitations will extend to the Contractor in respect of Cookies where the Client utilises the Contractor's website to make enquiries. The Contractor agrees to display preference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:				
	(a) IP address, browser, email client type and other similar details;				
	(b) tracking website usage and traffic; and				
	(c) reports are available to the Contractor when the Contractor sends an email to the Client, so the Contractor may collect and review that information ("collectively Personal Information").				
	If the Client consents to the Contractor's use of Cookies on the Contractor's website and later wishes to withdraw that consent, the Client may manage and control the Contractor's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.				
	The Client agrees for the Contractor to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by the Contractor.				
	The Client agrees that the Contractor 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 Contractor being given a consumer credit report to collect personal credit information relating to an overdue payment on commercial credit.				
	The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other agreed purposes or required by):				
	(a) the provision of Works/Equipment; and/or				
	(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works/Equipment; 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/Equipment.				
	The Contractor may give information about the Client to a CRB for the following purposes:				
	(a) to obtain a consumer credit report; and/or				
	(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 20.3 above;				
	(b) name of the credit provider and that the Contractor 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 (provided the Contractor is a member of an approved OAIC External Disputes Resolution Scheme), 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 Contractor 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 Contractor, the Client has committed a serious credit infringement; and/or				
	(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).				
	The Client shall have the right to request (by e-mail) from the Contractor:				
	(a) a copy of the Personal Information about the Client retained by the Contractor and the right to request that the Contractor correct any incorrect Personal Information; and				
	(b) that the Contractor does not disclose any Personal Information about the Client for the purpose of direct marketing.				
	The Contractor 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 Contract or is required to be maintained and/or stored in accordance with the law.				
	The Client can make a privacy complaint by contacting the Contractor via e-mail. The Contractor 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 .				
	Equipment Hire	21.			
	Equipment shall at all times remain the property of the Contractor and is returnable on demand by the Contractor. In the event that Equipment is not returned to the Contractor in the condition in which it was delivered the Contractor retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all the Contractor shall have right to charge the Client the full cost of replacing the Equipment.	21.1			
	The Client shall:	21.2			
	(a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment;				
	(b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment; and				
	(c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Contractor to the Client.				
	The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self-insure, the Contractor's interest in the Equipment and agrees to indemnify the Contractor against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.	21.3			
	Notwithstanding the above clause, immediately on request by the Contractor the Client will pay:	21.4			
	(a) any lost hire charges the Contractor would have otherwise been entitled to for the Equipment, under this, or any other hire agreement; and				
	(b) any insurance excess payable in relation to a claim made by either the Client or the Contractor in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or the Contractor's.				
	Return of the Equipment ("Return") will be completed when the:	21.5			
	(a) Equipment is returned by the Client to the Contractor's place of business; or				
	(b) Contractor takes back possession of the Equipment once collection by the Contractor is affected.				
	Building and Construction Industry Security of Payment Act 2002	22.			
	At the Contractor's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.	22.1			
	Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.	22.2			
	Service of Notices	23.			
	Any written notice given under this Contract shall be deemed to have been given and received:	23.1			
	(a) by handing the notice to the other party, in person;				
	(b) by leaving it at the address of the other party as stated in this Contract;				
	(c) by sending it by registered post to the address of the other party as stated in this Contract;				
	(d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission; or				
	(e) if sent by email to the other party's last known email address.	23.2			
	Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.				
	Trusts	24.			
	If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Client covenants with the Contractor as follows:	24.1			
	(a) the Contractor extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;				
	(b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;				
	(c) the Client will not during the term of the Contract without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:				
	(i) the removal, replacement or retirement of the Client as trustee of the Trust;				
	(ii) any alteration to or variation of the terms of the Trust;				
	(iii) any advancement or distribution of capital of the Trust; or				
	(iv) any resettlement of the trust fund or trust property.				
	General	25.			
	Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.	25.1			
	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, that provision shall be severed from this Contract, and 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 Victoria and are subject to the jurisdiction of the courts in that state. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).	25.3			
	The Contractor may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.	25.4			
	The Client cannot licence or assign without the written approval of the Contractor. The Contractor may elect to subcontract out any part of the Works 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 Contractor's sub-contractors without the authority of the Contractor.	25.5			
	The Client agrees that the Contractor may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to 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 their request for the Contractor to provide Works to the Client.	25.6			
	Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to the Contractor, once the parties agree that the Force Majeure event has ceased.	25.7			
	Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.	25.8			
	The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.	25.9			
	If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed that this Contract shall not affect the validity and enforceability of the remaining terms of this Contract.	25.10			
		25.11			