

# Surepaint – Terms & Conditions of Trade

1. **Definitions**
  - 1.1. "Contractor" means Surepaint Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Surepaint Pty Ltd.
  - 1.2. "Customer" means the person's ordering the Works as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
  - 1.3. "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Contractor to the Customer at the Customer's request from time to time (where the context so permits the terms "Works" or "Materials" shall be interchangeable for the other).
  - 1.4. "Price" means the Price payable for the Works as agreed between the Contractor and the Customer in accordance with clause 5 below.
2. **Acceptance**
  - 2.1. The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if any the Customer places an order for or accepts delivery of any Works.
  - 2.2. These terms and conditions may only be amended with the Contractor's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Contractor and the Customer.
  - 2.3. These general terms and conditions are meant to be read in conjunction with the applicable terms and conditions for hire services. If there are any inconsistencies between the relevant documentation, then the terms and conditions contained therein shall prevail.
  - 2.4. These terms and conditions constitute the entire agreement between the Contractor and the Customer as to the subject matter of this document and supercedes any prior agreement, understanding or representation between the parties and any terms provided by the Customer that purport to govern the Contractor's performance of the Works.
  - 2.5. The Customer accepts that no scope of Works or variations shall be performed that fall outside the parameters of the Contractor's licence.
  - 2.6. Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.
3. **Change in Control**
  - 3.1. The Customer shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax numbers, or business practice). The Customer shall be liable for any loss incurred by the Contractor as a result of the Customer's failure to comply with this clause.
4. **Exclusions to the Quotation**
  - 4.1. Unless otherwise stated in the quotation, any site induction or training is allowed for and if required then an hourly rate per person shall be charged as a variation.
  - 4.2. The quoted Price is based on surface preparation being limited to sanding or scraping to the previous coat (if applicable) and filling minor surface depressions to create a flush surface and does not include any remedial work that may be required such as:
    - (a) surface or structural repairs or replacement; and/or
    - (b) removal of lead paint, asbestos or other hazardous materials.
5. **Price and Payment**
  - 5.1. At the Contractor's sole discretion the Price shall be either:
    - (a) as indicated on invoices provided by the Contractor to the Customer in respect of Works performed or Materials supplied; or
    - (b) the Contractor's quoted Price (subject to clause 5.2) which shall be binding upon the Contractor provided that the Customer shall accept the Contractor's quotation in writing within ninety (90) days.
  - 5.2. The Contractor reserves the right to change the Price:
    - (a) if a variation to the Materials which are to be supplied is requested including:
      - (i) additional coats of paint required as a result of colour selection that does not provide adequate coverage over the existing surface; or
      - (ii) a change to the paint colour brand or finish after the Works have commenced or the Contractor has ordered the paint on the Customer's behalf;
      - (iii) where any colour scheme exceeds a maximum of three colours.
    - (b) if a variation to the Works originally scheduled is requested:
      - (i) including any applicable plans or specifications;
      - (ii) where performance of the Works requires access to property which adjoins the site and the Customer has been unable to secure access rights or access rights are reduced or withdrawn resulting in additional scaffolding or alternative access expenses;
      - (iii) where the access methods on which the quote was based (such as scaffolding, cherry pickers, booms, scissor lifts etc.) are restricted due to engineering issues or site conditions (such as utility poles or wires or minimum clearances); and
      - (iv) any undisclosed information relevant to site access, scope of Works or estimated time to complete the Works which the Customer knew or should have known may affect the performance of the Works in anyway.
    - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, latent conditions or defects, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by a third party not being completed, poorly prepared surfaces, pre-existing condition of the surface or structure, hard rock or other barriers below the surface, latent soil conditions, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Works; or
    - (d) in the event of increases to the Contractor in the cost of labour or Materials which are beyond the Contractor's control.
  - 5.3. At the Contractor's sole discretion a deposit may be required.
6. **Provision of the Works**
  - 6.1. Subject to clause 6.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.
  - 6.2. 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 Customer written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Customer to:
    - (a) make a selection; or
    - (b) have the site ready for the Works; or
    - (c) notify the Contractor that the site is ready;if the Owner disputes any extension of time the Owner must provide the Contractor with written notification specifying why they are disputing the time extension requested, such notification to be provided to the Contractor within five (5) working days of the Owner receiving the Contractor's time extension request. Lack of advice from the Owner to the contrary shall mean that the Owner has accepted the Contractor's time extension request.
  - 6.3. The Works shall be performed during the Contractor's standard working hours of 7:00am – 3:00pm. Work required outside of these hours or if site access is limited during these hours thereby impacting on the Contractor's ability to complete the Works during normal working hours shall be a variation and clause 5.2 shall apply.
  - 6.4. The Customer or the Customer's nominated representative must be able to:
    - (a) provide the Contractor and the Contractor's equipment access to the site including gaining access to any locked or restricted areas as is required; and
    - (b) co-ordinate, the performance of any other works at the site or occupation of the site by others to enable the Contractor to provide and complete the Works.
  - 6.5. The Contractor to provide and complete the Works.
    - (c) make themselves available between the Contractor's standard working hours for onsite visits and/or meetings.
  - 6.6. If for any reason (including the discovery of asbestos, latent or defective site conditions, remedial preparation work being required) that the Contractor, or employees of the Contractor, reasonably form the opinion that the Customer's premises is not safe for the Works to proceed then the Contractor shall be entitled to delay the Works (in accordance with the provisions of clause 6.2 above) until the Contractor is satisfied that it is safe for the installation to proceed.
  - 6.7. Where the Contractor gives advice or recommendations to the Customer, or the Customer's agent, regarding the remedial work or other surface preparation required and such advice or recommendations are not acted upon then the Contractor shall require the Customer or their agent to authorise commencement of the Works in writing. The Contractor:
    - (a) shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works and the Contractor shall reserve the right to dismiss any warranty claims; and
    - (b) the Contractor may cancel the agreement where continuation of the Works may endanger the health and safety of the Contractor, the Contractor's employees or any other person or property as per clause 20.1.
  - 6.8. Any time or date given by the Contractor to the Customer is an estimate only. The Contractor shall not be liable for any loss or damage whatsoever due to failure by the Contractor to deliver the Works (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of the Contractor.
  - 6.9. Priming of tops and bottoms of doors is not included unless otherwise stated in your quotation and is deemed to be a carpenter's job prior to installation.
  - 6.10. If new handrails or timber are installed, carpenters are required to prime all interconnecting joints prior to painters arrival.
  - 6.11. Painters are not responsible for punching or setting off nails or screws below surface unless otherwise stated in your quotation and if required will be deemed a variation.
  - 6.12. Painters are not responsible for sanding or plaster work undertaken by plasters unless otherwise stated in your quotation and if required will be deemed a variation.
  - 6.13. Painters do not paint or gap fill tops of windows or door frames to interior buildings unless otherwise stated in your quotation and if required will be deemed a variation.
  - 6.14. In the event the Owner asks for part or all of the job specification to be changed, despite the Contractor's recommendation otherwise, the Owner warrants that Contractor cannot be held liable for the outcomes as a result of the changes.
7. **Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by the Contractor, which may be:**
  - (a) on completion of the Works; or
  - (b) by way of progress payments in accordance with the Contractor's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Contractor.If any part of an invoice is in dispute then the Customer shall notify the Contractor in writing within three (3) business days once in receipt of the invoice. The Customer shall not withhold or delay payment of the invoice.
- 7.1. Payment may be made by cash, cheque, electronic/on-line banking, credit card/PayPal (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Customer and the Contractor.
- 7.2. Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for the sale of the Materials. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer 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.
8. **Risk**
  - 8.1. If the Contractor retains ownership of the Materials under clause 14 then:
    - (a) where the Contractor is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by the Contractor or the Contractor's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
    - (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 Customer.
  - 8.2. Where the Customer has supplied materials for the Contractor to complete the Works, the Customer acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. The Contractor shall not be responsible for any defects in the Works, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Customer.
  - 8.3. The Contractor shall not be liable for inferior existing paintwork where the Contractor's paint has bonded to the existing paintwork and weakened the previous paint causing any kind of flake, crack or blemish.
  - 8.4. The Customer is solely responsible for paint colour selections and shall be noted in writing. The Customer accepts that the final colour may differ from colour swabs, electronic images or other samples owing to natural factors which contribute to colour variations such as light and the age of the surface painted. The Contractor recommends that the Customer tests and verify the colour selection through the use of sample pots prior to commencement of the Works.
  - 8.5. The Contractor shall not be held liable for the quality of the Works if the Customer does not follow the Contractor's recommendations as to the number of coats of paint required to obtain the final finish if the Customer chooses to accept a reduced Price based on fewer coats of paint.
  - 8.6. The Contractor shall not be liable whatsoever for any loss or damage to the works (including, but not limited to, painted surfaces) that is caused by any other tradesman. The Customer acknowledges that Materials supplied may:
    - (a) exhibit variations in shade, colour, texture, surface and finish; and
    - (b) fade or change colour over time; and
    - (c) expand, contract or distort as a result of exposure to heat, cold, weather; and
    - (d) mark or stain if exposed to certain substances; and
    - (e) be damaged or disfigured by impact or scratching.
  - 8.7. If different from what has been discussed subject to the availability of materials and changes will be done on the sole discretion of the Contractor provided that the materials are of equal quality or better.
  - 8.8. Whilst the Contractor will make every effort to match sales samples to the finished Materials the Contractor accepts no liability whatsoever where such samples differ to the finished Materials supplied and the Contractor will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur. The Customer accepts that colour matching of paint may not be exact due to fading or condition of the sample provided by the Customer.
  - 8.9. Timber is a natural product and as such may exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations.
  - 8.10. Timber is a hygroscopic material subject to expansion and contraction, therefore the Contractor will accept no responsibility for gaps that may appear during prolonged dry periods.
  - 8.11. The Contractor shall not be liable in the event natural timber tannin leech from the substrate and damage adjacent areas.
  - 8.12. The Customer acknowledges that variations of colour and texture are inherent in concrete and render. 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.
  - 8.13. The Contractor gives no guarantee (expressed or implied) as to the length of time the curing process will take and/or against cracking of concrete or render 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.
  - 8.14. The Customer acknowledges and agrees that it is their responsibility to organise and be liable for all costs associated with protecting the concrete and shall take all reasonable precautions to protect against destruction or damage by way of vandalism. In the event that the concrete is destroyed or damaged due to vandalism, then the cost of repair or replacement shall be borne by the Customer.
  - 8.15. The Customer shall supply an area suitable for washing out the Contractor's equipment and for depositing all unused concrete, render and slurry.
  - 8.16. If the Owner 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 site risk of the Owner and it shall be the Owner'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 customer's expense.
9. **Customer's Responsibilities**
  - 9.1. It is the intention of the Contractor and agreed by the Customer that it is the responsibility of the Customer to provide and have erected scaffolding to enable the Works to be undertaken (where in the Contractor's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed.
  - 9.2. The Customer agrees to remove any furniture, furnishings or personal goods from the vicinity of the Works and agrees that the Contractor shall not be liable for any damage caused to those items through the Customer's failure to comply with this clause.
  - 9.3. The Customer shall supply at the Customer's expense, suitable amenities (including, but not limited to, power, water and toilet facilities) and site storage facilities.
10. **Dimensions, Plans and Specifications**
  - 10.1. All customary building industry tolerances shall apply to the dimensions and measurements of the Works unless the Contractor and the Customer agree otherwise in writing.
  - 10.2. The Contractor shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer.
11. **Surplus Materials**
  - 11.1. Unless otherwise stated elsewhere in this contract:
    - (a) demolished Materials remain the Customer's property; and
    - (b) Materials which the Contractor brings to the site which are surplus remain the property of the Contractor.
  - 11.2. **Access**
    - 11.2.1. The Customer shall ensure that the Contractor has clear and free access to the work site at all times to enable them to undertake the Works. The Contractor shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Contractor.
    - 11.2.2. **Underground Locations**
      - 11.2.2.1. Prior to the Contractor commencing any work the Customer must advise the Contractor of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer 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.
      - 11.2.2.2. Whilst the Contractor will take all care to avoid damage to any underground services the Customer 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 12.1.
  - 11.3. **Compliance with Laws**
    - 11.3.1. The Customer 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 specifically to the discovery of asbestos or removal and disposal of lead paint particles.
    - 11.3.2. The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.
    - 11.3.3. The Customer agrees that the site will comply with any work health and safety (WHS) laws relating to building/ construction sites and any other relevant safety standards or legislation.
  - 11.4. **Title**
    - 11.4.1. The Contractor and the Customer agree that ownership of the Materials shall not pass until:
      - (a) the Customer has paid the Contractor all amounts owing to the Contractor; and
      - (b) the Customer has met all of its other obligations to the Contractor.
    - 11.4.2. 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.
    - 11.4.3. It is further agreed that:
      - (a) until ownership of the Materials passes to the Customer in accordance with clause 14.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Contractor on request.
      - (b) the Customer holds the benefit of the Customer'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 Customer 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 Customer sells, disposes or parts with possession of the Materials then the Customer 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 Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer 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 it so directs.
      - (f) unless the Materials have become fixtures the Customer 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 Customer 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.
      - (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 Customer.
  12. **Personal Property Securities Act 2009 ("PPSA")**
    - 12.1. In this clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the PPSA.
    - 12.2. Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials and/or collateral (account) – being a monetary

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- obligation of the Customer to the Contractor for Works – that have previously been supplied and that will be supplied in the future by the Contractor to the Customer.
- 15.3. The Customer 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 15.3(a)(i) or 15.3(a)(ii);
  - (b) indemnify, and 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 charged thereby;
  - (c) not register a financing change 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 change statement in relation to the Materials and/or collateral (account in favour of a third party without the prior written consent of the Contractor);
  - (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.
- 15.4. The Contractor and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 15.5. The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6. The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7. Unless otherwise agreed to in writing by the Contractor, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8. The Customer shall unconditionally ratify any actions taken by the Contractor under clauses 15.3 to 15.5.
- 15.9. Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 16. Security and Charge**
- 16.1. In consideration of the Contractor agreeing to supply the Materials, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2. The Customer 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.
- 16.3. The Customer irrevocably appoints the Contractor and each director of the Contractor as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Customer's behalf.
- 17. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 17.1. The Customer must inspect all Materials on delivery (or the Works on completion) and must within seven (7) 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 Customer must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Contractor to inspect the Materials or to review the Works provided.
- 17.2. 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**).
- 17.3. The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.4. 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. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.5. If the Customer 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.
- 17.6. 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 Customer has paid for the Materials.
- 17.7. 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 Customer 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 Customer which were not defective.
- 17.8. If the Customer is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Materials is:
  - (a) limited to the value of any express warranty or warranty card provided to the Customer 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;
  - (c) otherwise negated absolutely.
- 17.9. Subject to this clause 17, returns will only be accepted provided that:
  - (a) the Customer has complied with the provisions of clause 17.1; and
  - (b) the Contractor has agreed that the Materials are defective; and
  - (c) the Materials are returned within a reasonable time at the Customer'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.
- 17.10. Notwithstanding clauses 17.1 to 17.9 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 Customer failing to properly maintain or store any Materials;
  - (b) the Customer using the Materials for any purpose other than that for which they were designed;
  - (c) the Customer 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 Customer or any third party without the Contractor's prior approval;
  - (e) the Customer failing to follow any instructions or guidelines provided by the Contractor;
  - (f) substrates with existing corrosion or moisture ingress;
  - (g) surfaces affected by building movement or structural issues;
  - (h) settling, movement, cracking, lifting, peeling, flaking, deterioration or other failure of the substrate or a previous surface coating;
  - (i) concrete surfaces affected by concrete cancer or with carbon contaminated concrete substrate;
  - (j) ferric metals with existing rust conditions or non-ferric metals with existing oxidising issues;
  - (k) any galvanised metals whatsoever;
  - (l) any floor coating or natural timber coating performed in the course of the Works;
  - (m) any part of the Works where the Contractor notified the Customer that a surface is unsuitable for a particular coating and the Customer directed the Contractor to apply that coating; and
  - (n) fair wear and tear, any accident, or act of God.
- 17.11. 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.
- 18. Intellectual Property**
- 18.1. Where the Contractor has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, 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 Customer at the Contractor's discretion.
- 19. Default and Consequences of Default**
- 19.1. 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.
- 19.2. If the Customer owes the Contractor any money the Customer shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's contract default fee, and bank dishonour fees).
- 19.3. Further to any other rights or remedies the Contractor may have under this contract, if a Customer has made payment to the Contractor, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 19.4. Without prejudice to any other remedies the Contractor may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Works to the Customer. The Contractor will not be liable to the Customer for any loss or damage the Customer suffers because the Contractor has exercised its rights under this clause.
- 19.5. 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 Customer 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 Customer will be unable to make a payment when it falls due;
  - (b) the Customer 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
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 20. Cancellation**
- The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time by giving written notice to the Customer. On giving such notice the Contractor shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.2. In the event that the Customer cancels the delivery of Works the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21. Privacy Act 1988**
- 21.1. The Customer 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, previous credit applications, credit history) about the Customer in relation to credit provided by the Contractor.
- 21.2. The Customer agrees that the Contractor may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
  - (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 21.3. The Customer consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit.
- 21.4. The Customer 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; and/or
  - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Works; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Works.
- 21.5. The Contractor may give information about the Customer to a CRB for the following purposes:
  - (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 21.6. The information given to the CRB may include:
  - (a) personal information as outlined in 21.1 above;
  - (b) name of the credit provider and that the Contractor is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer 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 Customer has committed a serious credit infringement;
  - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 21.7. The Customer shall have the right to request (by e-mail) from the Contractor:
  - (a) a copy of the information about the Customer retained by the Contractor and the right to request that the Contractor correct any incorrect information; and
  - (b) that the Contractor does not disclose any personal information about the Customer for the purpose of direct marketing.
- 21.8. The Contractor will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 21.9. The Customer 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 Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 22. Dispute Resolution**
- If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
  - (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
  - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 23. Building and Construction Industry Payments Act 2004**
- 23.1. 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 Payments Act 2004 may apply.
- 23.2. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.
- 24. General**
- 24.1. The failure by the Contractor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Contractor's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.2. These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland in which the Contractor has its principal place of business, and are subject to the jurisdiction of the courts in Brisbane, Queensland.
- 24.3. Subject to clause 17, the Contractor shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 24.4. The Contractor may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 24.5. The Customer agrees that the Contractor may amend these terms and conditions at any time. If the Contractor makes a change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Contractor to provide any Works to the Customer.
- 24.6. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 24.7. Any notice required to be given in writing shall be deemed to be given if delivered by hand or sent by post to the person to whom it is necessary or required to give notice to and shall in the case of posting be deemed to be received after the expiry of two (2) full business days from the date of posting.
- 24.8. The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
- 24.9. By accepting this quote, the Owner grants the Contractor rights to any photography or videography that they may take when working on the property to be used for marketing purposes.
- 24.10. The Owner also grants the Contractor to set up job site signs as well as allowing the Contractor to solicit services around the immediate area of the worksite.