

1. Definitions

- 1.1 **“Acknowledgment Document”** means the document signed by the Customer in conjunction with these Terms and Conditions of Trade and applicable if DMC elects, whereby the Customer acknowledges the extent and effect of the provision of security the Customer provides to DMC in consideration of the provision of Materials or Works.
- 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.
- 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.
- 1.4 **“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 Customer does not wish to allow Cookies to operate in the background when using DMC’s website, then the Customer 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.**
- 1.5 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting DMC to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.6 **“DMC”** means DMC Civil and Structural Pty Ltd T/A D & M Consulting, its successors and assigns or any person acting on behalf of and with the authority of DMC Civil and Structural Pty Ltd T/A D & M Consulting.
- 1.7 **“Documentation”** means any, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by DMC in the course of it conducting, or supplying to the Customer, any services.
- 1.8 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.9 **“Intended Use”** means a building product and the use thereof, for which the building product is intended to be, or is reasonably likely to be, associated with a building.
- 1.10 **“Non-Conforming Building Product”** means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
- (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.11 **“Price”** means the Price payable (plus any GST where applicable) for the Works as agreed between DMC and the Customer in accordance with clause 7 below.
- 1.12 **“Works”** means all Works (including consultation, technical and design services) or Materials (including technical drawings or reports) supplied by DMC 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).
- 1.13 **“Worksite”** means the address nominated by the Customer to which the Materials are to be prepared for by DMC.

2. Acceptance

- 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 Customer places an order for or accepts delivery of the Works.
- 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.
- 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.
- 2.4 The Customer acknowledges and accepts that:
- (a) the supply of Materials:
 - (i) on credit shall not take effect until the Customer has completed a credit application with DMC and it has been approved with a credit limit established for the account. In the event that the supply of Materials requested exceeds the Customer’s credit limit and/or the account exceeds the payment terms, DMC reserves the right to refuse delivery; and
 - (ii) for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, DMC reserves the right to vary the Price with alternative Materials as per clause 5.2, subject to prior confirmation and agreement by both parties.
 - (b) once the Customer has approved the drawings (including all artwork and associated material), DMC shall not be liable for any errors and/or omissions in the Materials or Works and additional charges may apply for any additional alterations to the Materials or Works, or for the resupply of the Materials, after the Customer has provided the signed off drawings;
 - (c) the lead time shall commence only after a final measure and upon receipt of this signed Contract; and
 - (i) the Customer has provided to DMC with any and all documents, permits, approvals and any other information required by DMC;
 - (ii) the Customer has provided to DMC the security (if any) requested by DMC;
 - (iii) DMC has received from the Customer cleared funds of any deposit or advanced payment(s) that DMC has required; and
 - (iv) DMC has accepted the Customer’s order.
 - (d) any variation to the Materials received outside the stipulated timeframe provided on the quotation will be charged for in accordance with clause 7.2.;

- (e) whilst DMC shall exercise due care and diligence, the Customer accepts that DMC, DMC's Directors and employees, believe that the information provided to the Customer is correct and that any calculations, estimates, conclusions or recommendations contained in any document are reasonably held or made as at the time of compilation. However, no warranty is made as the accuracy or reliability of any calculations, estimates, conclusions or recommendation (which may change with notice) or other information contained therein and, to the maximum extent permitted by law, DMC disclaims all liability and responsibility for any direct or indirect loss or damage which may be suffered by any recipient through relying on anything contained therein or omitted therefrom;
- (f) in the event that the Customer's Development Application ("DA") and/or Construction Certificate ("CC") is not approved, the Customer shall still be liable for any costs payable.
- 2.5 Any advice, recommendation, information, assistance, or service provided by DMC in relation to the Materials or Works supplied is given in good faith to the Customer, or the Customer's agent and is based on DMC's own knowledge and experience and shall be accepted without liability on the part of DMC. Where such advice or recommendations are not acted upon then DMC shall require the Customer or their agent to authorise commencement of the Works in writing. DMC shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works. Accordingly, DMC offers no warranty in regard to the aforementioned.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Customer agrees that should the Customer introduce any third party to DMC as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Materials, or Works on the Customer's behalf and/or to request any variation to the Works on the Customer's behalf (such authority to continue until all requested Works have been completed or the Customer otherwise notifies DMC in writing that said person is no longer the Customer's duly authorised representative).
- 3.2 In the event that the Customer's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise DMC in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Customer specifically acknowledges and accepts that they will be solely liable to DMC for all additional costs incurred by DMC (including DMC's profit margin) in providing any Materials or Works or variation/s requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

- 4.1 The Customer acknowledges and accepts that DMC 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 DMC 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 DMC in respect of the Works.
- 4.2 In circumstances where the Customer is required to place an order for Materials, in writing, or otherwise as permitted by these terms and conditions, the Customer 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) ("**Customer Error**"). The Customer must pay for all Materials it orders from DMC notwithstanding that such Materials suffer from a Customer Error and notwithstanding that the Customer has not taken or refuses to take delivery of such Materials. DMC is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Customer Errors.

5. Change in Control

- 5.1 The Customer shall give DMC 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 number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by DMC as a result of the Customer's failure to comply with this clause.

6. Credit Card Information

- 6.1 DMC will:
- (a) keep the Customer's personal details, including credit card details for only as long as is deemed necessary by DMC;
- (b) not disclose the Customer's credit card details to any third party; and
- (c) not unnecessarily disclose any of the Customer's personal information, except in accordance with the Privacy Act (clause 26) or where required by law.
- 6.2 The Customer expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due and outstanding by the Customer, DMC is entitled to immediately charge the Customer'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 Customer pursuant to the terms of this Contract.

7. Price and Payment

- 7.1 At DMC's sole discretion, the Price shall be either:
- (a) as indicated on invoices provided by DMC to the Customer in respect of Works performed or upon placement of an order for the Materials; or
- (b) the Price as at the date of delivery of the Works according to DMC's current price list, as previously disclosed to the Customer upon the Customer's placement of an order for Materials; or
- (c) DMC's quoted Price (subject to clause 7.2) which shall be binding upon DMC provided that the Customer shall accept DMC's quotation in writing within thirty (30) days.
- 7.2 DMC reserves the right to change the Price:

- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite, obscured building/Worksite defects, incorrect measurements, plans and/or specifications provided by the Customer, as a result of delays from third party suppliers, work required for pre-existing conditions that are not apparent on a visual inspection, work outside normal business hours, safety considerations, change of design, prerequisite work by any third party not being completed, lack of required utilities, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, changes to any applicable statutes, standards, regulations and bylaws of government, local and other public authorities, etc.) which are only discovered on commencement of the Works; or
 - (d) where additional costs are incurred by DMC due to unexpected delays, or receipt of approvals or permits, access to an assessment area not being available as was agreed or when pre-arranged; or
 - (e) in the event of increases to DMC in the cost of labour or Materials (including, but not limited to, overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange, taxes, levies and/or freight and insurance charges) which are beyond DMC's control.
- 7.3 Variations will be charged for on the basis of DMC's quotation, and will be detailed in writing, and shown as variations on DMC's invoice. The Customer shall be required to respond to any variation submitted by DMC within ten (10) working days. Failure to do so will entitle DMC 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.
- 7.4 At DMC's sole discretion, a reasonable non-refundable deposit may be required upon placement of an order for Materials, in accordance with any quotation provided by DMC or as notified to the Customer prior to the placement of an order for Materials.
- 7.5 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by DMC, which may be:
- (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with DMC'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 Worksite but not yet installed; or
 - (c) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Customer by DMC.
- 7.6 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and DMC.
- 7.7 DMC may in its discretion allocate any payment received from the Customer towards any invoice that DMC determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer DMC may re-allocate any payments previously received and allocated. In the absence of any payment allocation by DMC, payment will be deemed to be allocated in such manner as preserves the maximum value of DMC's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 7.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by DMC 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 Customer must notify DMC in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as DMC investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in DMC placing the Customer's account into default and subject to default interest in accordance with clause 24.1.
- 7.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to DMC an amount equal to any GST DMC must pay for any supply by DMC under this or any other Contract 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. Reimbursable Expenses**
- 8.1 DMC shall be reimbursed for all expenses reasonably and properly incurred in connection with the provision of the Works, except where such expenses are specifically stated in writing by DMC as being non-reimbursable. All reimbursable expenses (e.g. travel, communications, couriers, etc.) will be charged at the cost involved to DMC, plus an administration fee of up to ten percent (10%) thereof.
- 9. Provision of the Works**
- 9.1 Subject to clause 9.2 it is DMC's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 9.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that DMC claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond DMC's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the Worksite ready for the Works; or
 - (c) notify DMC that the Worksite is ready.
- 9.3 DMC may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 9.4 Any time specified by DMC for delivery of the Works is an estimate only and DMC will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that DMC is unable to supply the Works as agreed solely due to any action or inaction of the Customer, then DMC shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date.

10. Extension of Contract Period

- 10.1 DMC shall be entitled to claim an extension to the term of the project in the event of delays resulting from any matter whatsoever which is not entirely under the control of DMC. These matters shall include, but are not limited to, delays caused by:
- (a) response(s) to information request(s) made by DMC to the Customer not being available when required;
 - (b) approval authorities response times for requests for preliminary decisions/information;
 - (c) information from sub-contractors, councils or referral agencies not being available when required;
 - (d) changes to the design brief being requested by the Customer;
 - (e) time taken by the relevant authority for the granting of required approvals/certificates;
 - (f) any other variation to this Contract.
- 10.2 In the event that there is a break in the continuity of Works being provided by DMC due to the Customer's instructions or lack of instruction and such instructions are not received within thirty (30) calendar days of being requested by DMC, or from the last Customer instruction, or all Works are suspended by DMC pursuant to overdue payments, then fees for Works completed at the time of such a break or suspension shall be:
- (a) the percentage due for completed Works of the current stage, plus the cost of all project staff working at the time of such a break or suspension of the Works for thirty (30) days, all fees due up to date of such a break or suspension plus all fees, wages and expenses reasonably incurred as a result of such a break or suspension, unless otherwise agreed; and
 - (b) if the project recommences, in addition to the amounts payable previously, the Customer shall pay a recommencement fee to DMC. The fee shall be equivalent to the time charge cost for five (5) days of all project staff required to be working on the project at the time of such a break or suspension of Works, unless other agreed.

11. Subcontract

- 11.1 DMC shall be entitled, with the consent of the Customer, to engage individuals on a subcontract or consultancy basis, whether or not operating under corporate structure, to assist in the provision of the Works pursuant to the Contract.
- 11.2 DMC shall remain liable for the performance of all obligations under these terms and conditions including the Works that are subject of a subcontract.
- 11.3 The Customer agrees and understands that they have no authority to give any instruction to any of DMC's sub-contractors without the authority of DMC.
- 11.4 The Customer acknowledges and accepts that the Customer shall be responsibility for all monies payable to other such subcontractor or consultant.

12. Risk

- 12.1 DMC retains ownership of the Materials under clause 18.
- 12.2 Notwithstanding the provisions of clause 12.1 if the Customer specifically requests DMC to leave Materials outside DMC'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 Customer and it shall be the Customer'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.
- 12.3 DMC shall not be liable for any defect or damage resulting from incorrect or faulty installation or failure to understand the Materials by any party.
- 12.4 The Customer acknowledges that DMC is only responsible for parts that are replaced/supplied by DMC and does not at any stage accept any liability in respect of components supplied by any other third party that subsequently fail and are found to be the source of the failure, the Customer agrees to indemnify DMC against any loss or damage to the Materials, or caused thereby, or any part thereof howsoever arising.

13. Dimensions, Plans, Tolerances and Specifications

- 13.1 In the event the Customer gives information relating to the Materials (including plans, specifications, CAD drawings, measurements, quantities, and other information provided by the Customer):
- (a) that it is the Customer's responsibility to verify the accuracy of the information before the Customer or DMC places an order based on the information. DMC accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause; and
 - (b) DMC shall be entitled to rely on the accuracy of such information. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, DMC accepts no responsibility for any loss, damages, or costs however resulting therefrom, including any variation to the Materials required due to inaccurate plans provided by the Customer, such additional Works shall be charged in accordance with clause 7.2.
- 13.2 If the giving of an estimate or quotation for the supply of Materials involves DMC estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of DMC estimated measurements and quantities before the Customer places an order based on such estimate or accepts such quotation.
- 13.3 Should the Customer require any changes to DMC estimated measurements and quantities, the Customer shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.
- 13.4 All plans and technical drawings are prepared to scale in accordance with Australian Standard AS1100.
- 13.5 DMC is not liable for printing and errors that may occur from printing Material supplied by DMC.

14. Worksite Access and Condition

- 14.1 The Customer shall ensure that DMC has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections and review site conditions). DMC shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of DMC.
- 14.2 It is the Customer's responsibility to:
- (a) provide DMC, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities; and

- (b) ensure that the work area and surrounds are protected and free from hazards (including but not limited to flammable materials), fume extracted and ventilated. DMC accepts no liability whatsoever in this respect.
- 14.3 Where isolation and/or disconnection of overhead powerlines (or shrouding) are required to facilitate the supply of Materials and/or Works under this Contract, this shall be the sole responsibility of the Customer.
- 14.4 The Customer acknowledges and accepts that they shall remove any tangible items susceptible to damage from the vicinity of the Works (and provide protection where necessary) and agrees that DMC shall not be liable for any damage caused to those items through the Customer's failure to comply with this clause.
- 14.5 **Worksite Inductions**
- (a) in the event the Customer requires an employee or sub-contractor of DMC to undertake a Worksite induction during working hours, the Customer 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 Customer shall be liable to pay DMC's standard (and/or overtime, if applicable) hourly labour rate; or
- (b) where DMC is in control of the Worksite, the Customer and/or the Customer's third-party contractors must initially carry out DMC's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by **appointment only** and unless otherwise agreed, in such an event the Customer and/or third party acting on behalf of the Customer must at all times be accompanied by DMC.
- 15. Underground Locations**
- 15.1 Prior to DMC commencing any work the Customer must advise DMC of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and 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 the Worksite.
- 15.2 Whilst DMC will take all care to avoid damage to any underground services the Customer agrees to indemnify DMC 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 15.1.
- 16. Compliance with Laws**
- 16.1 The Customer and DMC 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 work health and safety laws (WHS) relating or any other relevant safety standards or legislation pertaining to the Works.
- 16.2 Both parties acknowledge and agree:
- (a) to comply with the National Construction Code of Australia (NCC) and the Building Products (Safety) Act 2017, 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.
- 16.3 Where the Customer has supplied products for DMC to complete the Works, the Customer 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 DMC's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with state and/or territory regulations, then DMC 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 invoiced in accordance with clause 7.2.
- 16.4 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.
- 17. Modern Slavery**
- 17.1 For the purposes of this clause:
- (a) "**Act**" means the *Modern Slavery Act 2018 (Cth)*
- (b) "**Modern Slavery**", "**Modern Slavery Statement**" and "**Reporting Entity**" have the meanings given by the Act.
- 17.2 If the Customer is a Reporting Entity, it shall comply with all of its obligations under the Act.
- 17.3 Whether the Customer is a Reporting Entity or not, the Customer shall:
- (a) use reasonable endeavours to identify, assess and address risks of Modern Slavery practices in its operations and supply chains;
- (b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;
- (c) use its reasonable endeavours to ensure that if at any time the Customer becomes aware of Modern Slavery practices in its operations and supply chains, the Customer must as soon as reasonably practicable take all reasonable steps to address or remove these practices;
- (d) provide to DMC a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and
- (e) within seven (7) days of DMC's request (or such longer period as DMC agrees), provide to DMC any information or assistance reasonable requested by DMC;
- (i) concerning the Customer's compliance with the Act;
- (ii) concerning the Customer's operations and supply chains;
- (iii) to enable DMC to prepare a Modern Slavery Statement or otherwise comply with the Act; or
- (iv) to enable DMC to assess and address risks of Modern Slavery practices in its operations and supply chains.
- 17.4 The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and DMC will be able to terminate the Contract for any breach by the Customer.
- 17.5 The Customer warrants that any information supplied to DMC is true and accurate and may be relied upon for the purposes of the Act.
- 17.6 The Customer shall indemnify DMC against any loss or liability suffered by DMC as a result of the Customer's breach of this clause 17.
- 18. Title**
- 18.1 DMC and the Customer agree that ownership of the Materials shall not pass until:
- (a) the Customer has paid DMC all amounts owing to DMC; and
- (b) the Customer has met all of its other obligations to DMC.

- 18.2 Receipt by DMC 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.
- 19. Personal Property Securities Act 2009 (“PPSA”)**
- 19.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 19.2 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 obligation of the Customer to DMC for Works – that have previously been supplied and that will be supplied in the future by DMC to the Customer.
- 19.3 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 DMC 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 19.3(a)(i) or 19.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, DMC 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 DMC;
 - (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 DMC;
 - (e) immediately advise DMC 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.
- 19.4 DMC 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.
- 19.5 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.
- 19.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 19.7 Unless otherwise agreed to in writing by DMC, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 19.8 The Customer shall unconditionally ratify any actions taken by DMC under clauses 19.3 to 19.5.
- 19.9 Subject to any express provisions to the contrary (including those contained in this clause 19), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 20. Security and Charge**
- 20.1 In consideration of DMC agreeing to supply the Materials and/or provide its Works and as acknowledged by DMC in accordance with any Acknowledgment Document the Customer grants DMC a security interest by way of a floating charge (registerable by DMC pursuant to the PPSA) 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 Customer or owned by the Customer in the future, including but not limited to those set out in any Acknowledgment Document, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Materials and/or Works under this Contract and/or permit DMC to appoint a receiver to the Customer in accordance with the *Corporations Act 2001* (Cth).
- 20.2 The Customer indemnifies DMC from and against all DMC's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising DMC's rights under this clause.
- 20.3 In the event that the Customer defaults or breaches any term of this Contract and as a result, the security provided in clauses 18.1, 19.2 and 20.1 as applicable, is deemed insufficient by DMC to secure the repayment of monies owed by the Customer to DMC, the Customer hereby grants DMC 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 Customer now, or owned by the Customer in the future, to secure the performance of the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money), in accordance with the Acknowledgement Document.
- 21. Defects, Warranties and Returns, Competition and Consumer Act 2010 (“CCA”)**
- 21.1 The Customer must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify DMC 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 DMC to inspect the Materials or to review the Works provided.
- 21.2 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**).
- 21.3 DMC acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 21.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, DMC makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. DMC's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 21.5 If the Customer is a consumer within the meaning of the CCA, DMC's liability is limited to the extent permitted by section 64A of Schedule 2.
- 21.6 If DMC is required to replace any Materials under this clause or the CCA, but is unable to do so, DMC may refund any money the Customer has paid for the Materials.

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- 21.7 If DMC 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 DMC 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.
- 21.8 If the Customer is not a consumer within the meaning of the CCA, DMC'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 DMC at DMC's sole discretion;
 - (b) limited to any warranty to which DMC is entitled, if DMC did not manufacture the Materials;
 - (c) otherwise negated absolutely.
- 21.9 Subject to this clause 21, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 21.1; and
 - (b) DMC 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.
- 21.10 Notwithstanding clauses 21.1 to 21.9 but subject to the CCA, DMC 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 DMC's prior approval;
 - (e) the Customer failing to follow any instructions or guidelines provided by DMC;
 - (f) fair wear and tear, any accident, or act of God.
- 21.11 Notwithstanding anything contained in this clause if DMC is required by a law to accept a return then DMC will only accept a return on the conditions imposed by that law.

22. Use of Reports and Advice

- 22.1 Any advice that DMC gives to the Customer, its employees or agents is for the Customer's exclusive use and must be used only for the purpose described in the scope of services.
- 22.2 Unless DMC gives the Customer prior written consent, the advice:
- (a) must not be used or disclosed for any other purpose, referred to in any document or made available to any other person, except the Customer's lawyers or other professional advisor assisting in the services; and
 - (b) may not be relied upon by any other party other than the Customer.
- 22.3 DMC is not responsible to any other party other than the Customer, who is provided with or obtains a copy of DMC's advice.
- 22.4 DMC's advice may, on occasion, be given to the Customer in draft form or orally only on the basis that the Customer may not rely on advice in that form. Accordingly, DMC shall not be responsible if the Customer or any other party relies on the advice or chooses to act, or refrains from acting, on the basis of any draft advice or oral comments or advice.
- 22.5 The Customer acknowledges that the signed copy of DMC's final advice is the definitive version.
- 22.6 Sometimes circumstances may change after DMC has provided their final advice to the Customer. If this happens DMC will not update any final advice it has provided to the Customer under these terms and conditions. If the Customer would like DMC to update their final advice, they must contact DMC and both parties can discuss a suitable term of engagement.

23. Intellectual Property and Confidentiality

- 23.1 DMC shall retain ownership of the copyright to all Documentation produced by DMC during the course of the Works. Provided the Customer is not in default (as per clause 24.1), the Customer shall only have a licence to use such Documentation for the purpose of the individual brief supplied, and the project accepted, by the Customer and is not entitled to any additional use without DMC's express approval in writing.
- 23.2 The Customer warrants that all designs, specifications or instructions given to DMC will not cause DMC to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify DMC against any action taken by a third party against DMC in respect of any such infringement.
- 23.3 It is further agreed that, until ownership of the Documentation passes to the Customer in accordance with clause 18.1:
- (a) the Customer is only a bailee of the Documentation and must return the Documentation to DMC immediately upon request by DMC; and
 - (b) the Customer holds the benefit of the Customer's insurance of the Documentation on trust for DMC and must pay to DMC the proceeds of any insurance in the event of the Documentation being lost, damaged or destroyed; and
 - (c) the Customer irrevocably authorises DMC to enter any premises (as an invitee) where DMC believes the Documentation are kept and recover possession of the Documentation.
- 23.4 DMC may photograph, video or record by any and all means the project for the duration thereof, and upon completion, for DMC's own use and for use in exhibitions, or award competitions, or publication in journals.
- 23.5 The Customer agrees that DMC may (at no cost) use for the purposes of marketing or entry into any competition, any Documentation which DMC has created for the Customer.
- 23.6 Unless otherwise agreed, DMC shall be free to dispose of any Documentation that DMC has prepared and/or was provided by the Customer and held in connection with the Works of the project seven (7) years after the date the final invoice is issued to the Customer.
- 23.7 Both the Customer and DMC agree to treat all information and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied, and will either return it or destroy it (together with any copies thereof) on request of the other party.
- 23.8 Exceptions to clause 23.7 will be disclosures to legal advisers, disclosures required by law, and disclosures necessary for the proper performance of the Works.

24. Default and Consequences of Default

- 24.1 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 DMC's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 24.2 If the Customer owes DMC any money, the Customer shall indemnify DMC from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Customer would be liable;
- in regard to legal costs on a solicitor and own client basis incurred in exercising DMC's rights under these terms and conditions, internal administration fees, DMC'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.
- 24.3 Further to any other rights or remedies DMC may have under this Contract, if a Customer has made payment to DMC, 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 DMC under this clause 24 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 24.4 Without prejudice to DMC's other remedies at law DMC shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to DMC shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to DMC becomes overdue, or in DMC's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by DMC;
 - (c) 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

25. Cancellation

- 25.1 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 Materials and/or Works to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 25.2 If DMC, due to reasons beyond DMC's reasonable control, is unable to deliver any Materials and/or Works to the Customer, DMC may cancel any Contract to which these terms and conditions apply or cancel delivery of Materials and/or Works at any time before the Materials and/or Works are delivered by giving written notice to the Customer. On giving such notice DMC shall repay to the Customer any money paid by the Customer for the Materials and/or Works. DMC shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 25.3 The Customer may cancel delivery of the Materials and/or Works by written notice served within forty-eight (48) hours of placement of the order. If the Customer cancels delivery in accordance with this clause 25.3, the Customer will not be liable for the payment of any costs of DMC, except where a deposit is payable in accordance with clause 7.4. Failure by the Customer to otherwise accept delivery of the Materials and/or Works shall place the Customer in breach of this Contract.

26. Privacy Policy

- 26.1 All emails, documents, images or other recorded information held or used by DMC is Personal Information, as defined and referred to in clause 26.3, and therefore considered Confidential Information. DMC 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 IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) 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"). DMC acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by DMC that may result in serious harm to the Customer, DMC will notify the Customer 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 Customer by written consent, unless subject to an operation of law.
- 26.2 Notwithstanding clause 26.1, privacy limitations will extend to DMC in respect of Cookies where the Customer utilises DMC's website to make enquiries. DMC agrees to display reference 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 Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to DMC when DMC sends an email to the Customer, so DMC may collect and review that information ("collectively Personal Information")
- If the Customer consents to DMC's use of Cookies on DMC's website and later wishes to withdraw that consent, the Customer may manage and control DMC's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 26.3 The Customer agrees for DMC 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 Customer in relation to credit provided by DMC.
- 26.4 The Customer agrees that DMC 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

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- (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 (2) years.
- 26.5 The Customer consents to DMC being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 26.6 The Customer agrees that personal credit information provided may be used and retained by DMC 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.
- 26.7 DMC 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.
- 26.8 The information given to the CRB may include:
 - (a) Personal Information as outlined in 26.3 above;
 - (b) name of the credit provider and that DMC 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 (provided DMC 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 Customer no longer has any overdue accounts and DMC has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of DMC, 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).
- 26.9 The Customer shall have the right to request (by e-mail) from DMC:
 - (a) a copy of the Personal Information about the Customer retained by DMC and the right to request that DMC correct any incorrect Personal Information; and
 - (b) that DMC does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 26.10 DMC 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 Contract or is required to be maintained and/or stored in accordance with the law.
- 26.11 The Customer can make a privacy complaint by contacting DMC via e-mail. DMC 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.

27. Service of Notices

- 27.1 Any written notice given under this Contract shall be deemed to have been given and received:
 - (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;
 - (e) if sent by email to the other party's last known email address.
- 27.2 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.

28. Trusts

- 28.1 If the Customer 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 DMC may have notice of the Trust, the Customer covenants with DMC as follows:
 - (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Customer 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 Customer against the Trust, the trustees and the trust fund. The Customer 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 Customer will not during the term of the Contract without consent in writing of DMC (DMC will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer 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.

29. Building and Construction Industry Security of Payments Act 1999

- 29.1 At DMC'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 Payments Act 1999 may apply.
- 29.2 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 Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

30. General

- 30.1 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.
- 30.2 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.
- 30.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts in that state. These terms prevail over all terms and conditions of the Customer (even if they form part of the Customer's purchase order).
- 30.4 DMC may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.
- 30.5 The Customer cannot licence or assign without the written approval of DMC.
- 30.6 DMC 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 Customer agrees and understands that they have no authority to give any instruction to any of DMC's sub-contractors without the authority of DMC.
- 30.7 The Customer agrees that DMC may amend their general terms and conditions for subsequent future Contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for DMC to provide Works to the Customer.
- 30.8 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 Customer to make a payment to DMC, once the parties agree that the Force Majeure event has ceased.
- 30.9 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.
- 30.10 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.
- 30.11 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.