
McClelland Concrete Pumping – Terms & Conditions of Trade

1. Definitions

- 1.1 “MCP” means McClelland and Co Pty Limited ATF The McClelland Family Trust T/A McClelland Concrete Pumping, its successors and assigns or any person acting on behalf of and with the authority of McClelland and Co Pty Limited ATF The McClelland Family Trust T/A McClelland Concrete Pumping.
- 1.2 “Customer” means the person/s requesting MCP to provide the Services as specified in any invoice, document or order, and if there is more than one person requesting the Services is a reference to each person jointly and severally.
- 1.3 “Incidental Items” means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by MCP in the course of it conducting, or supplying to the Customer, any Services.
- 1.4 “Services” means all Services supplied by MCP to the Customer at the Customer’s request from time to time.
- 1.5 “Price” means the price payable (plus any GST where applicable) for the Services as agreed between MCP and the Customer in accordance with clause 5 of this contract.
- 1.6 “GST” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

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 the Customer places an order for, or accepts Services provided by MCP.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and MCP.
- 2.3 These terms and conditions may be meant to be read in conjunction with MCP’s Hire Form, and:
- (a) where the context so permits, the term “Services” shall include any supply of Equipment, as defined therein; and
- (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
- 2.4 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.
- 2.5 The Customer acknowledges that the supply of Services on credit shall not take effect until the Customer has completed a credit application with MCP and it has been approved with a credit limit established for the account.
- 2.6 In the event that the supply of Services request exceeds the Customer’s credit limit and/or the account exceeds the payment terms, MCP reserves the right to refuse delivery and/or request an alternative payment method.

3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that MCP 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 MCP in the formation and/or administration of this contract; and/or
- (b) contained/omitted in/from any literature (hard copy and/or electronic) supplied by MCP in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of MCP; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Customer shall give MCP 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, or business practice). The Customer shall be liable for any loss incurred by MCP as a result of the Customer’s failure to comply with this clause.

5. Price and Payment

- 5.1 At MCP’s sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by MCP to the Customer; or
- (b) MCP’s quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 MCP reserves the right to change the Price if a variation to MCP’s quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such as poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, extension of time required to complete the provision of Services, prerequisite work by any third party not being completed, unexpected blockage or malfunction of the pump or pipes, or as a result of any increase to MCP in the cost of materials and labour) will be charged for on the basis of MCP’s quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 5.3 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by MCP, which may be:
- (a) on delivery of the Services;
- (b) the date specified on any invoice or other form as being the date for payment; or
- (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by MCP.
- 5.4 Payment may be made by cash, electronic/on-line banking, or by any other method as agreed to between the Customer and MCP.
- 5.5 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to MCP an amount equal to any GST MCP must pay for any supply by MCP under this or any other agreement for providing MCP’s Services. 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.

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6. Delivery of Services

- 6.1 At MCP's sole discretion delivery of the Services shall take place when the Services are supplied to the Customer at the Customer's nominated address.
- 6.2 Delivery of the Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 6.3 At MCP's discretion, the cost of delivery is included in the Price.
- 6.4 MCP may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 6.5 Any time specified by MCP for delivery of the Services is an estimate only and MCP 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 Services to be supplied at the time and place as was arranged between both parties. In the event that MCP is unable to supply the Services as agreed solely due to any action or inaction of the Customer then MCP shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.

7. Risk

- 7.1 Irrespective of whether MCP retains ownership of any Incidental Items all risk for such items shall pass to the Customer as soon as such items are delivered to the Customer and shall remain with the Customer until such time as MCP may repossess the Incidental Items in accordance with clause 12.3(f). The Customer must insure all Incidental Items on or before delivery.
- 7.2 The Customer acknowledges that variations of colour and texture are inherent in concrete. MCP 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.
- 7.3 The Customer shall be responsible for the provision of accurate measurements, dimensions and suitability of materials to be provided to MCP prior to the commencement of the Services. MCP shall not be held liable for any losses, damages, or costs incurred by the Customer as a result of any such inaccurate data being provided.

8. Customer's Responsibilities

- 8.1 The Customer shall ensure that the correct traffic and pedestrian measures are in place. Failure to do so will result in the Customer becoming liable for any costs incurred to MCP.
- 8.2 The Customer agrees to supply whatever is required for the Services to be provided (including adequate space, water, and a compressor for the blowing of long lines), and will make proper provision for the uninterrupted laying of pipes and pumping of concrete.
- 8.3 In order for MCP to provide the Services, the Customer shall supply a pump-able concrete which is suitable for MCP's pumping plant. MCP accepts no responsibility for the slump, strength, quality or suitability of the concrete pumped, nor for any defects, inadequacy or failing of foundations, formwork or any other part of the site, or of the Customer's instructions. MCP may complete the Services without reporting any apparent defects or failings aforesaid. MCP reserves the right to not pump any loads that are outside of expected specifications (i.e. Hot Loads, Shoot mixes, etc.).
- 8.4 The Customer shall provide and maintain, in position, effective screening to protect against damage caused by any malfunction of the pump or pipe line.
- 8.5 The Customer shall supply an area suitable for washing out MCP's equipment and for depositing all unused concrete and slurry from MCP's hose and hopper.
- 8.6 MCP is not responsible for the removal of rubbish (including trade waste) from or clean-up of the building/constructions site/s, nor for any damage or waste created by the concrete/Readymix truck. This is the responsibility of the Customer or the Customer's agent.
- 8.7 The Customer further acknowledges that, in the case of high-rise jobs, the Customer shall maintain and control all pipe line (according to the standards of the relevant code of practice) except MCP's lines between the pump and the stack.
- 8.8 Whilst all due care will be taken no liability will be accepted by MCP for damage to the services or any other element embedded in the concrete.
- 8.9 The Customer acknowledges and agrees that it is their responsibility to organise and shall 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.
- 8.10 It is further agreed that:
- (a) the Customer will supply temporary lighting, toilet, eating and first aid facilities if required; and
 - (b) the Customer will advise all amenity locations (including without limitation, water, gas, electricity, telephone or any other underground amenity) to MCP prior to delivery.

9. Access

- 9.1 The Customer shall ensure that MCP has clear and free access to the work site at all times to enable them to deliver the Services. MCP 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 MCP.

10. Compliance with Laws

- 10.1 The Customer and MCP shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 10.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 10.3 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. Insurance

- 11.1 MCP shall have public liability insurance of at least five million dollars (\$5m). It is the Customer's responsibility to ensure that they are similarly insured.

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- 12. Title**
- 12.1 MCP and the Customer agree that where it is intended that the ownership of Incidental Items is to pass to the Customer that such ownership shall not pass until:
- (a) the Customer has paid MCP all amounts owing for the Services; and
 - (b) the Customer has met all other obligations due by the Customer to MCP in respect of all contracts between MCP and the Customer.
- 12.2 Receipt by MCP 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 and until then MCP's ownership or rights in respect of the Incidental Items shall continue.
- 12.3 It is further agreed that:
- (a) the Customer is only a bailee of the Incidental Items and must return the Incidental Items to MCP immediately upon request by MCP;
 - (b) the Customer holds the benefit of the Customer's insurance of the Incidental Items on trust for MCP and must pay to MCP the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Customer sells, disposes or parts with possession of the Incidental Items then the Customer must hold the proceeds of sale of the Incidental Items on trust for MCP and must pay or deliver the proceeds to MCP on demand.
 - (d) the Customer should not convert or process the Incidental Items 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 MCP and must dispose of or return the resulting product to MCP as MCP so directs.
 - (e) the Customer shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of MCP;
 - (f) the Customer irrevocably authorises MCP to enter any premises where MCP believes the Incidental Items are kept and recover possession of the Incidental Items.
- 13. Personal Property Securities Act 2009 ("PPSA")**
- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 13.2 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:
- (a) all Incidental Items previously supplied by MCP to the Customer;
 - (b) all Incidental Items will be supplied in the future by MCP to the Customer; and
 - (c) all the Customer's present and after acquired property being a charge, including anything in respect of which the Customer has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Customer to MCP for Services – that have previously been provided and that will be provided in the future by MCP to the Customer.
- 13.3 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 MCP 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 13.3(a)(i) or 13.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, MCP 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 Incidental Items charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of MCP;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items in favour of a third party without the prior written consent of MCP.
- 13.4 MCP 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.
- 13.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by MCP, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Customer must unconditionally ratify any actions taken by MCP under clauses 13.3 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 14. Security and Charge**
- 14.1 In consideration of MCP agreeing to supply Services, 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).
- 14.2 The Customer indemnifies MCP from and against all MCP's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising MCP's rights under this clause.
- 14.3 The Customer irrevocably appoints MCP and each director of MCP as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.
- 15. Defects, Warranties and the Competition and Consumer Act 2010 (CCA)**
- 15.1 The Customer must inspect MCP's Services on completion of the Services and must within seven (7) days notify MCP in writing of any evident defect in the Services or Incidental Items provided (including MCP's workmanship) or of any other failure by MCP to comply with the

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description of, or quote for, the Services which MCP was to supply. The Customer must notify any other alleged defect in MCP's Services or Incidental Items as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow MCP to review the Services or Incidental Items that were provided.

- 15.2 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**).
- 15.3 MCP acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, MCP makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. MCP's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Customer is a consumer within the meaning of the CCA, MCP's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If MCP is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then MCP may refund any money the Customer has paid for the Services but only to the extent that such refund shall take into account the value of Services and Incidental Items which have been provided to the Customer which were not defective.
- 15.7 If the Customer is not a consumer within the meaning of the CCA, MCP's liability for any defective Services or Incidental Items is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by MCP at MCP's sole discretion;
 - (b) otherwise negated absolutely.
- 15.8 Notwithstanding clauses 15.1 to 15.7 but subject to the CCA, MCP 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 Incidental Items;
 - (b) the Customer using the Incidental Items for any purpose other than that for which they were designed;
 - (c) the Customer continuing to use any Incidental Items after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Services by the Customer or any third party without MCP's prior approval;
 - (e) the Customer failing to follow any instructions or guidelines provided by MCP;
 - (f) fair wear and tear, any accident, or act of God.

16. Intellectual Property

- 16.1 Where MCP has designed, drawn or developed Incidental Items for the Customer, then the copyright in any Incidental Items shall remain the property of MCP. Under no circumstances may such designs, drawings and documents be used without the express written approval of MCP.
- 16.2 The Customer warrants that all designs, specifications or instructions given to MCP will not cause MCP to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify MCP against any action taken by a third party against MCP in respect of any such infringement.
- 16.3 The Customer agrees that MCP may (at no cost) use for the purposes of marketing or entry into any competition, any Incidental Items which MCP has created for the Customer.

17. Default and Consequences of Default

- 17.1 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 MCP's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment. Administration fee \$200 will be applied reoccurring monthly until account is paid in full..
- 17.2 If the Customer owes MCP any money the Customer shall indemnify MCP from and against all costs and disbursements incurred by MCP in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, MCP's contract default fee, and bank dishonour fees).
- 17.3 Further to any other rights or remedies MCP may have under this contract, if a Customer has made payment to MCP by cheque, 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 MCP under this clause 17 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.
- 17.4 Without prejudice to MCP's other remedies at law MCP shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to MCP shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to MCP becomes overdue, or in MCP'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 MCP;
 - (c) the Customer becomes insolvent, 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.

18. Cancellation

- 18.1 Without prejudice to any other remedies MCP may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions MCP may suspend or terminate the supply of Services to the Customer. MCP will not be liable to the Customer for any loss or damage the Customer suffers because MCP has exercised its rights under this clause.
- 18.2 MCP may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Customer. On giving such notice MCP shall repay to the Customer any money paid by the Customer for the Services. MCP shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Customer cancels delivery of the Services the Customer shall be liable for any and all loss incurred (whether direct or indirect) by MCP as a direct result of the cancellation (including, but not limited to, any loss of profits).

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19. Privacy Act 1988

- 19.1 The Customer agrees for MCP 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 MCP.
- 19.2 The Customer agrees that MCP 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.
- 19.3 The Customer consents to MCP being given a consumer credit report to collect overdue payment on commercial credit.
- 19.4 The Customer agrees that personal credit information provided may be used and retained by MCP for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Services; 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 Services.
- 19.5 MCP 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.
- 19.6 The information given to the CRB may include:
- (a) personal information as outlined in 19.1 above;
 - (b) name of the credit provider and that MCP 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 MCP has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of MCP, 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).
- 19.7 The Customer shall have the right to request (by e-mail) from MCP:
- (a) a copy of the information about the Customer retained by MCP and the right to request that MCP correct any incorrect information; and
 - (b) that MCP does not disclose any personal information about the Customer for the purpose of direct marketing.
- 19.8 MCP 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.
- 19.9 The Customer can make a privacy complaint by contacting MCP via e-mail. MCP 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

20. Dispute Resolution

- 20.1 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.

21. Building and Construction Industry Payments Act 2004

- 21.1 At MCP's sole discretion, if there are any disputes or claims for unpaid Services then the provisions of the Building and Construction Industry Payments Act 2004 may apply.
- 21.2 Nothing in this contract 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.

22. Service of Notices

- 22.1 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.

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- 22.2 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.
- 23. Trusts**
- 23.1 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 ("Trust") then whether or not MCP may have notice of the Trust, the Customer covenants with MCP as follows:
- (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - (b) the Customer has full and complete power and authority under the Trust 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 or 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 without consent in writing of MCP (MCP 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 property.
- 24. General**
- 24.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable 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, the state in which MCP has its principal place of business, and are subject to the jurisdiction of the Toowoomba Courts in Queensland.
- 24.3 Subject to clause 15, MCP 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 MCP of these terms and conditions (alternatively MCP's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 24.4 MCP may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 24.5 The Customer cannot licence or assign without the written approval of MCP.
- 24.6 MCP may elect to subcontract out any part of the Services 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 MCP's sub-contractors without the authority of MCP.
- 24.7 The Customer agrees that MCP may amend these terms and conditions by notifying 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 MCP to provide Goods to the Customer.
- 24.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 24.9 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.