

NATURE PLAYGROUNDS – TERMS AND CONDITIONS OF TRADE

1. Definitions

- 1.1 "NP" means Erutan Pty Ltd T/A Nature Playgrounds, its successors and assigns or any person acting on behalf of and with the authority of Erutan Pty Ltd T/A Nature Playgrounds.
 1.2 "Client" means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
 1.3 "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by NP to the Client at the Client's request from time to time (where the context so permits the terms "Works" or "Materials" shall be interchangeable for the other).
 1.4 "Price" means the Price payable (plus any GST where applicable) for the Works as agreed between NP and the Client in accordance with clause 4 below.
 1.5 "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 Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
 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 Client and NP.
 2.3 Works are supplied by NP only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that nay such order is placed on terms that purport to override these terms and conditions of trade.
 2.4 Where the Client requesting or organising NP to provide the Works is acting on behalf of any third party (including but not limited to multiple property owners and/or contributors to any driveway, fence, retaining wall), and that third party is intended to be responsible for the either the full or partial payment of the Price, then in the event that third party does not pay for the Works when due, the Client acknowledges that they shall be liable for the full payment of the Price as if they had contracted the Works on their own behalf.
 2.5 In the event that the Works provided by NP are the subject of an insurance claim, the Client shall be responsible for the payment of any monies payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by NP and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.
 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 2003 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Change in Control

- 3.1 The Client shall give NP not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by NP as a result of the Client's failure to comply with this clause.

4. Price and Payment

- 4.1 At NP's sole discretion the Price shall be either:
 (a) as indicated on invoices provided by NP to the Client in respect of Works performed or Materials supplied; or
 (b) NP's Price at the date of delivery of the Works according to NP's current pricelist; or
 (c) NP's quoted Price (subject to clause 4.2) which shall be binding upon NP provided that the Client shall accept NP's quotation in writing within thirty (30) days.
 4.2 NP 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 conditions, limitations to site accessibility, availability of machinery, safety considerations, prerequisite work by a third party not being completed, inaccurate measurements, plans or specifications supplied, change to the design, hard rock or other barriers below the surface, latent soil conditions, iron reinforcing rods in concrete, or hidden pipes and wiring underground etc.) which are only discovered on commencement of the Works; or
 (d) in the event of increases to NP in the cost of labour or materials which are beyond NP's control.
 4.3 Variations will be charged for on the basis of NP's quotation, and will be detailed in writing, and shown as variations on NP's invoice. The Client shall be required to respond to any variation submitted by NP within ten (10) working days. Failure to do so will entitle NP 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.
 4.4 At NP's sole discretion a deposit may be required.
 4.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by NP, which may be:
 (a) the date specified on any invoice or other form as being the date for payment; or
 (b) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by NP.
 4.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and NP.
 4.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by NP nor to withhold payment of any invoice because part of that invoice is in dispute.
 4.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to NP an amount equal to any GST NP must pay for any supply by NP under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of the Works

- 5.1 Subject to clause 5.2 it is NP's responsibility to ensure that the Works start as soon as it is reasonably possible.
 5.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that NP claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond NP's control, including but not limited to any failure by the Client to:
 (a) make a selection; or
 (b) have the site ready for the Works; or
 (c) notify NP that the site is ready.
 5.3 At NP's sole discretion, the cost of delivery is included in the Price.
 5.4 NP 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.
 5.5 Any time specified by NP for delivery of the Works is an estimate only and NP will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that NP is unable to supply the Works as agreed solely due to any action or inaction of the Client, then NP shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

6. Risk

- 6.1 If NP retains ownership of the Materials under clause 14 then:
 (a) where NP is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either;
 (i) the Client or the Client's nominated carrier takes possession of the Materials at NP's address; or
 (ii) the Materials are delivered by NP or NP's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 (b) where NP is to both supply and install Materials then NP shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
 6.2 Notwithstanding the provisions of clause 6.1 if the Client specifically requests NP to leave Materials outside NP's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
 6.3 NP shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, NP accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

- 6.4 The Client acknowledges and agrees that in the event NP require access, in order to undertake the Works, to an adjoining or adjacent property or land to the nominated job site, that is not owned by the Client, then it is the Client's responsibility to gain permission from the land owner to use the above mentioned property throughout the process or delivering the Works. In the event the land owner denies access or use of the land or property, the Client shall be liable for all costs incurred by NP in gaining permission to access and/or use the property through any legal process that may be deemed necessary.
- 6.5 Where the Client has provided instructions or specifications for NP to complete the Works (including, but not limited to, any requested variation to the original design), then NP shall accept no liability whatsoever for the finished Works being deemed as unsatisfactory to the Client.
- 6.6 The Client accepts and acknowledges that shrubs, plants, natural turf and any other flora, foliage or vegetation supplied by NP are organic in nature and require care and maintenance. NP reserves the right to not accept liability for the plants where such plants may have become affected or died due to the Client's failure to properly maintain the plants and/or to follow any instructions or guidelines provided by NP in regard to the proper care of the plants (including but not limited to, adequate watering of the plants).
- 6.7 The Client warrants that any structures (where applicable) to which the Materials are to be affixed are able to withstand the installation of the Materials and that are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos) that NP, or employees of NP, reasonably form the opinion that the Client's premises is not safe for the installation of Materials to proceed then NP shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 5.2 above) until NP is satisfied that it is safe for the installation to proceed.
- 6.8 Where the Client has supplied materials for NP to complete the Works, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. NP shall not be responsible for any defects in the materials, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 6.9 The Client acknowledges that Materials supplied may:
- fade or change colour over time; and
 - expand, contract or distort as a result of exposure to heat, cold, weather; and
 - mark or stain if exposed to certain substances; and
 - be damaged or disfigured by impact or scratching.
- 6.10 The Client must be on site to supervise the marking out of the fence line, placement of boundary pegs and during the installation of the fence. If the Client fails to comply with this clause, then NP accepts no responsibility for installation decisions that need to be made by NP in the Client's absence.
- 6.11 The Client acknowledges that it is their responsibility to remove any existing fence (including existing footings), trees, vines and shrubs to allow NP clear access along the proposed fence line prior to commencement of work by NP unless otherwise agreed in writing between NP and the Client. Under no circumstances will NP handle removal of asbestos product.
- 6.12 Whilst NP will take all due care during installation NP will not accept any responsibility for tiles or pavers damaged during installation.
- 6.13 Where fencing is installed on a retaining wall NP shall not be liable for any movement in the fence due to consolidation, or the movement of soil or any other component of the retaining wall.
- 6.14 NP shall not be responsible for digging land out under fence lines nor removal of soil from the work site.
- 6.15 NP reserves the right to touch-up all products supplied and installed on the work site to rectify minor blemishes or damage to paintwork.
- 6.16 Timber is a natural product and as such may exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst NP will make every effort to match sales samples to the finished Materials NP accepts no liability whatsoever where such samples differ to the finished Materials supplied.
- 6.17 Timber is a hygroscopic material subject to expansion and contraction, therefore NP will accept no responsibility for gaps that may appear in the timber during prolonged dry periods.
- 6.18 The Client acknowledges that variations of colour, shade and grain are inherent in all kiln fired products, concrete and natural stone. While every effort will be taken by NP to match colour, shade or grain of product, NP shall not be liable for any loss, damages or costs howsoever arising resulting from any variation in colour, shading or grain between batches of product or sale samples and the final product supplied.
- 6.19 Where applicable, NP gives no guarantee (expressed or implied) against optical hazing, crazing, cracking, chipping or scratching that may occur that is beyond NP's control due to the nature of the product at the time of installation, therefore it is recommended that the Client allows for extra product for such breakages.
- 6.20 If the Client orders an insufficient number of tiles, then NP will take no responsibility for any variation of colour in further batches supplied to the Client or the inability to supply Materials at all.
- 6.21 NP will accept no responsibility for tiles that have already been affixed.
- 6.22 NP shall not be liable whatsoever for any loss or damage to the Works (including, but not limited to, painted surfaces) that is caused by any other tradesmen.
- 6.23 NP gives no guarantee (expressed or implied) as to the length of time the curing process will take and/or against cracking of concrete that may occur naturally in the works such as:
- hairline cracking of paving and grout; or
 - damage caused by contact with chemicals, solvents, oils or any other substances; or
 - the affects by elements such as heat exposure or wet weather conditions that prolong the curing process.
- 6.24 The Client acknowledges and agrees that it is their responsibility to organise and be liable for all costs associated with protecting the concrete and shall take all reasonable precautions to protect against destruction or damage by way of vandalism. In the event that the concrete is destroyed or damaged due to vandalism then the cost of repair or replacement shall be borne by the Client.
- 6.25 NP shall not be liable for any defect in the Works if the Client does not follow NP's recommendations, including:
- to water the concrete periodically to limit the risk of possible cracking due to weather conditions;
 - that no foot traffic and/or any vehicles on the concrete for a minimum of forty-eight (48) hours but preferably seven (7) days;
 - that no heavy furniture is to be placed on the concrete area for a minimum of twenty-four (24) hours.
- 6.26 The Client shall supply an area suitable for washing out NP's equipment and for disposing all unused concrete and slurry.
- 7. Client's Responsibilities**
- 7.1 The Client agrees to remove any furniture, furnishings or personal goods from the vicinity of the Works and agrees that NP shall not be liable for any damage caused to those items through the Client's failure to comply with this clause.
- 7.2 The Client shall provide NP with a suitable free power source and access to water and toilet facilities.
- 8. Care of Materials**
- 8.1 NP may at its discretion notify the Client that it requires to store at the work site Materials, equipment, or plant and tools required for the Works, in which event the Client shall supply NP a safe area for storage and shall take all reasonable efforts to protect all items so stored from possible destruction, theft or damage. In the event that any such items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Client's responsibility.
- 9. Surplus Materials**
- 9.1 Unless otherwise stated elsewhere in this contract:
- demolished Materials remain the Client's property; and
 - Materials which NP brings to the site which are surplus remain the property of NP.
- 10. Access**
- 10.1 The Client shall ensure that NP has clear and free access to the work site at all times to enable them to undertake the works. NP 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 NP.
- 10.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by NP.
- 11. Underground Locations**
- 11.1 Prior to NP commencing any work the Client must advise NP of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 11.2 Whilst NP will take all care to avoid damage to any underground services the Client agrees to indemnify NP in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 11.1.
- 12. Insurance**
- 12.1 NP shall have public liability insurance of at least five million dollars (\$5m). It is the Client's responsibility to ensure that they are similarly insured.
- 13. Compliance with Laws**
- 13.1 The Client and NP 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 Australian Safety Standards pertaining to playground construction requirements and KidSafe guidelines.

- 13.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 13.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 13.4 The Client reserves the right not to clean the site if animal faeces or other contaminants could cause a health issue for NP's employees.
- 14. Title**
- 14.1 NP and the Client agree that ownership of the Materials shall not pass until:
- the Client has paid NP all amounts owing to NP; and
 - the Client has met all of its other obligations to NP.
- 14.2 Receipt by NP 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.
- 14.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 14.1:
- the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to NP on request.
 - the Client holds the benefit of the Client's insurance of the Materials on trust for NP and must pay to NP the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
 - the production of these terms and conditions by NP shall be sufficient evidence of NP's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with NP to make further enquiries.
 - the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for NP and must pay or deliver the proceeds to NP on demand.
 - the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of NP and must sell, dispose of or return the resulting product to NP as it so directs.
 - unless the Materials have become fixtures the Client irrevocably authorises NP to enter any premises where NP believes the Materials are kept and recover possession of the Materials.
 - NP may recover possession of any Materials in transit whether or not delivery has occurred.
 - the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of NP.
 - NP may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
- 15. Personal Property Securities Act 2009 ("PPSA")**
- 15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 15.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials and/or collateral (account) – being a monetary obligation of the Client to NP for Works – that have previously been supplied and that will be supplied in the future by NP to the Client.
- 15.3 The Client undertakes to:
- 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 NP may reasonably require to:
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA; or
 - correct a defect in a statement referred to in clause 15.3(a)(i) or 15.3(a)(ii);
 - indemnify, and upon demand reimburse, NP 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;
 - not register a financing change statement in respect of a security interest without the prior written consent of NP;
 - 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 NP;
 - immediately advise NP of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 15.4 NP and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 15.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by NP, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Client shall unconditionally ratify any actions taken by NP under clauses 15.3 to 15.5.
- 15.9 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 16. Security and Charge**
- 16.1 In consideration of NP agreeing to supply the Works, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Client indemnifies NP from and against all NP's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising NP's rights under this clause.
- 16.3 The Client irrevocably appoints NP and each director of NP as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.
- 17. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 17.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify NP in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow NP to inspect the Materials or to review the Works provided.
- 17.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 17.3 NP acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, NP makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. NP's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.5 If the Client is a consumer within the meaning of the CCA, NP's liability is limited to the extent permitted by section 64A of Schedule 2.
- 17.6 If NP is required to replace any Materials under this clause or the CCA, but is unable to do so, NP may refund any money the Client has paid for the Materials.
- 17.7 If NP 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 NP may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.
- 17.8 If the Client is not a consumer within the meaning of the CCA, NP's liability for any defect or damage in the Materials is:
- limited to the value of any express warranty or warranty card provided to the Client by NP at NP's sole discretion;
 - limited to any warranty to which NP is entitled, if NP did not manufacture the Materials;
 - otherwise negated absolutely.
- 17.9 Subject to this clause 17, returns will only be accepted provided that:
- the Client has complied with the provisions of clause 17.1; and
 - NP has agreed that the Materials are defective; and
 - the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 17.10 Notwithstanding clauses 17.1 to 17.9 but subject to the CCA, NP shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- the Client failing to properly maintain or store any Materials;
 - the Client using the Materials for any purpose other than that for which they were designed;
 - the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - interference with the Works by the Client or any third party without NP's prior approval;
 - the Client failing to follow any instructions or guidelines provided by NP;
 - fair wear and tear, any accident, or act of God.

18. Intellectual Property

- 18.1 Where NP has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in NP, and shall only be used by the Client at NP's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of NP.
- 18.2 The Client warrants that all designs, specifications or instructions given to NP will not cause NP to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify NP against any action taken by a third party against NP in respect of any such infringement.
- 18.3 The Client agrees that NP may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which NP has created for the Client.

19. Default and Consequences of Default

- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at NP's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes NP any money the Client shall indemnify NP from and against all costs and disbursements incurred by NP in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, NP's contract default fee, and bank dishonour fees).
- 19.3 Further to any other rights or remedies NP may have under this contract, if a Client has made payment to NP, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by NP under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 19.4 Without prejudice to NP's other remedies at law NP shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to NP shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to NP becomes overdue, or in NP's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by NP;
 - (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Cancellation

- 20.1 Without prejudice to any other remedies NP may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions NP may suspend or terminate the supply of Works to the Client. NP will not be liable to the Client for any loss or damage the Client suffers because NP has exercised its rights under this clause.
- 20.2 NP may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice NP shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to NP for Works already performed. NP shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by NP as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

21. Privacy Act 1988

- 21.1 The Client agrees for NP 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 Client in relation to credit provided by NP.
- 21.2 The Client agrees that NP may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 21.3 The Client consents to NP being given a consumer credit report to collect overdue payment on commercial credit.
- 21.4 The Client agrees that personal credit information provided may be used and retained by NP 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 Client'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 Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Works.
- 21.5 NP may give information about the Client 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 Client including credit history.
- 21.6 The information given to the CRB may include:
- (a) personal information as outlined in 21.1 above;
 - (b) name of the credit provider and that NP is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and NP has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of NP, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 21.7 The Client shall have the right to request (by e-mail) from NP:
- (a) a copy of the information about the Client retained by NP and the right to request that NP correct any incorrect information; and
 - (b) that NP does not disclose any personal information about the Client for the purpose of direct marketing.
- 21.8 NP will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 21.9 The Client can make a privacy complaint by contacting NP via e-mail. NP will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

22. Dispute Resolution

- 22.1 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.

23. Construction Contracts Act 2004

- 23.1 At NP's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Construction Contracts Act 2004 may apply.
- 23.2 Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act where applicable.

24. Service of Notices

- 24.1 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.

24.2 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.

25. General

- 25.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia in which NP has its principal place of business, and are subject to the jurisdiction of the courts in Western Australia.
- 25.3 Subject to clause 17, NP shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by NP of these terms and conditions (alternatively NP's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 25.4 Neither party to this contract may assign this contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld). NP 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 Client agrees and understands that they have no authority to give any instruction to any of NP's sub-contractors without the authority of NP.
- 25.5 The Client agrees that NP may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for NP to provide Works to the Client.
- 25.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party. 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