

1. Definitions

- 1.1 “VPC” shall mean Vogue Pergolas Canberra Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Vogue Pergolas Canberra Pty Ltd.
- 1.2 “Client” shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by VPC to the Client.
- 1.3 “Guarantor” means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 “Goods” shall mean Goods supplied by VPC to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by VPC to the Client.
- 1.5 “Services” shall mean all Services supplied by VPC to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 “Price” shall mean the price payable for the Goods as agreed between VPC and the Client in accordance with clause 4 of this contract.

2. The Commonwealth Trade Practices Act 1974 (“TPA”) and Fair Trading Acts (“FTA”)

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

3. Acceptance

- 3.1 Any instructions received by VPC from the Client for the supply of Goods and/or the Client’s acceptance of Goods supplied by VPC shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of VPC.
- 3.4 The Client shall give VPC not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client’s name and/or any other change in the Client’s details (including but not limited to, changes in the Client’s address, facsimile number, or business practice). The Client shall be liable for any loss incurred by VPC as a result of the Client’s failure to comply with this clause.
- 3.5 Goods are supplied by VPC 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 any such order is placed on terms that purport to override these terms and conditions of trade.

4. Price And Payment

- 4.1 At VPC’s sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by VPC to the Client in respect of Goods supplied; or
 - (b) VPC’s quoted Price (subject to clause 5) which shall be binding upon VPC provided that the Client shall accept VPC’s quotation in writing within thirty (30) days.
- 4.2 At VPC’s sole discretion a deposit may be required.
- 4.3 VPC may submit a detailed payment claim at intervals not less than one (1) month for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations and the value of materials delivered to the site but not installed.
- 4.4 At VPC’s sole discretion:
 - (a) payment shall be due on delivery of the Goods; or
 - (b) payment shall be due before delivery of the Goods; or
 - (c) payment for approved Clients shall be made by instalments in accordance with VPC’s payment schedule.
- 4.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.6 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Client and VPC.
- 4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Variations

- 5.1 VPC reserves the right to change the Price in the event of a variation to VPC’s quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties beyond the reasonable control of VPC such as granite or other unexpected terrain below the surface) will be detailed in writing and charged for on the basis of VPC’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.
- 5.2 In the event that the Client requests a variation VPC will give the Client a written variation document detailing the works, the amended Price, the estimated time to undertake the variation, and the likely delay, if any, and require written acceptance by the Client of the variation before commencing work on the variation.

6. Delivery Of Goods

- 6.1 At VPC's sole discretion delivery of the Goods shall take place when:
- (a) the Client takes possession of the Goods at VPC's address; or
 - (b) the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by VPC or VPC's nominated carrier).
- 6.2 At VPC's sole discretion the costs of delivery are included in the Price.
- 6.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then VPC shall be entitled to charge a reasonable fee for redelivery.
- 6.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 6.5 VPC may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.6 VPC shall endeavour to repair, in the most effective manner possible, any scratches or marks that may occur either during transportation or installation of the Goods.
- 6.7 The failure of VPC to deliver shall not entitle either party to treat this contract as repudiated.
- 6.8 VPC shall not be liable for any loss or damage whatever due to failure by VPC to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of VPC.

7. Risk

- 7.1 If VPC retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, VPC is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by VPC is sufficient evidence of VPC's rights to receive the insurance proceeds without the need for any person dealing with VPC to make further enquiries.
- 7.3 Any advice, recommendation, information, assistance or service provided by VPC in relation to Goods or Services supplied is given in good faith and shall be accepted without liability on the part of VPC and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.
- 7.4 It shall be the Client's responsibility to ensure that details of VPC's quotation are accurate in every respect for the intended purpose prior to acceptance, VPC shall not be liable for any errors not corrected on VPC's quotation or any resulting loss incurred by the Client or third party due to such errors.
- 7.5 VPC shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client.
- 7.6 The Client acknowledges that:
- (a) Goods supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time; and
 - (b) whilst VPC shall make all effort to match touch-up paint colour (which may differ slightly from the powder coat finish due to different application methods) to the intended surface in order to minimise such variations, VPC shall not be liable in any way whatsoever where such variations occur; and
 - (c) PVC covering may differ to the RHS bars by up to one (1) degree from parallel;
 - (d) PVC roofs shall be tensioned as reasonably as possible in relation to the welds.

8. Access

- 8.1 The Client shall ensure that VPC has clear and free access to the work site at all times to enable them to undertake the works. VPC shall not be liable for any delay due to lack of access (including, but not limited to, obstruction to the site caused by adverse weather conditions) to the works site.

9. Insurance

- 9.1 VPC shall have public liability insurance of at least \$5m. It is the Clients responsibility to ensure that they are similarly insured.

10. Compliance with Laws

- 10.1 The Client and VPC 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.
- 10.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the works.
- 10.3 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.

11. Underground Locations

- 11.1 Prior to VPC commencing any work the Client must advise VPC 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, Telstra cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

11.2 Whilst VPC will take all care to avoid damage to any underground services the Client agrees to indemnify VPC 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. Title

- 12.1 VPC and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid VPC all amounts owing for the particular Goods; and
 - (b) the Client has met all other obligations due by the Client to VPC in respect of all contracts between VPC and the Client.
- 12.2 Receipt by VPC 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 VPC's ownership or rights in respect of the Goods shall continue.
- 12.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until VPC shall have received payment and all other obligations of the Client are met; and
 - (b) until such time as ownership of the Goods shall pass from VPC to the Client VPC may give notice in writing to the Client to return the Goods or any of them to VPC. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
 - (c) VPC shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) if the Client fails to return the Goods to VPC then VPC or VPC's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
 - (e) the Client is only a bailee of the Goods and until such time as VPC has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to VPC for the Goods, on trust for VPC; and
 - (f) the Client shall not deal with the money of VPC in any way which may be adverse to VPC; and
 - (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of VPC; and
 - (h) VPC can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
 - (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that VPC will be the owner of the end products.

13. Defects

- 13.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify VPC of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford VPC an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which VPC has agreed in writing that the Client is entitled to reject, VPC's liability is limited to either (at VPC's discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
- 13.2 Goods will not be accepted for return other than in accordance with 13.1 above.

14. Warranty

- 14.1 Subject to the conditions of warranty set out in clause 14.2 VPC warrants that if any defect in any workmanship of VPC becomes apparent and is reported to VPC within twelve (12) months of the date of delivery (time being of the essence) then VPC will either (at VPC's sole discretion) replace or remedy the workmanship.
- 14.2 The conditions applicable to the warranty given by clause 14.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Goods; or
 - (ii) failure on the part of the Client to follow any instructions or guidelines provided by VPC; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and VPC shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without VPC's consent.
 - (c) in respect of all claims VPC shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 14.3 For Goods not manufactured by VPC, the warranty shall be the current warranty provided by the manufacturer of the Goods. VPC shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

15. Intellectual Property

- 15.1 Where VPC has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in VPC, and shall only be used by the Client at VPC's discretion.
- 15.2 The Client warrants that all designs or instructions to VPC will not cause VPC to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify VPC against any action taken by a third party against VPC in respect of any such infringement.

16. Default & Consequences of Default

- 16.1 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 one half percent (2.5%) per calendar month (and at VPC's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by VPC.
- 16.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify VPC from and against all costs and disbursements incurred by VPC in pursuing the debt including legal costs on a solicitor and own client basis and VPC's collection agency costs.
- 16.4 Without prejudice to any other remedies VPC may have, if at any time the Client is in breach of any obligation (including those relating to payment), VPC may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. VPC will not be liable to the Client for any loss or damage the Client suffers because VPC has exercised its rights under this clause.
- 16.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 16.6 Without prejudice to VPC's other remedies at law VPC shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to VPC shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to VPC becomes overdue, or in VPC's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

17. Security And Charge

- 17.1 Despite anything to the contrary contained herein or any other rights which VPC may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to VPC or VPC's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that VPC (or VPC's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should VPC elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify VPC from and against all VPC's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint VPC or VPC's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 17.1.

18. Cancellation

- 18.1 VPC may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice VPC shall repay to the Client any sums paid in respect of the Price. VPC shall not be liable for any loss or damage whatever arising from such cancellation.
- 18.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by VPC (including, but not limited to, any loss of profits) up to the time of cancellation.

19. Privacy Act 1988

- 19.1 The Client and/or the Guarantor/s agree for VPC to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by VPC.
- 19.2 The Client and/or the Guarantor/s agree that VPC may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by 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 credit worthiness of Client and/or Guarantor/s.
- 19.3 The Client consents to VPC being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 19.4 The Client agrees that personal credit information provided may be used and retained by VPC for the following purposes and for other purposes as shall be agreed between the Client and VPC or required by law from time to time:
- (a) provision of Goods; and/or
 - (b) marketing of Goods by VPC, its agents or distributors in relation to the Goods; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 19.5 VPC may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

20. Unpaid VPC's Rights

- 20.1 Where the Client has left any item with VPC for repair, modification, exchange or for VPC to perform any other Service in relation to the item and VPC has not received or been tendered the whole of the Price, or the payment has been dishonoured, VPC shall have:
- (a) a lien on the item;
 - (b) the right to retain the item for the Price while VPC is in possession of the item;
 - (c) a right to sell the item.
- 20.2 The lien of VPC shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.

21. Building and Construction Industry Security of Payments Act 1999 (for NSW Client's only)

- 21.1 At VPC's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 21.2 Nothing in this agreement 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.

22. General

- 22.1 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.
- 22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the State in which the sale is made and are subject to the jurisdiction of the courts of that State.
- 22.3 VPC shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by VPC of these terms and conditions.
- 22.4 In the event of any breach of this contract by VPC the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 22.5 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 VPC.
- 22.6 VPC may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 22.7 The Client agrees that VPC may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which VPC notifies the Client of such change.
- 22.8 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.
- 22.9 The failure by VPC to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect VPC's right to subsequently enforce that provision.

23. Acknowledgement and Consent

- 23.1 The Client acknowledges and consents to VPC taking, and using for promotional purposes only, photo's and/or video images of the site, Goods and Services, before, during and after completion of the works.
- 23.2 The Client agrees to make no demand, no claim and seek no compensation from VPC for the taking and use of photo's and/or video images pursuant to clause 23.1.