

1. Definitions

- 1.1 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **“VPA”** means Vogue Pergolas Australia Pty Ltd T/AVogue Pergolas Australia, its successors and assigns or any person acting on behalf of and with the authority of Vogue Pergolas Australia Pty Ltd T/AVogue Pergolas Australia.
- 1.3 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting VPA to provide the Works as specified in any proposal, quotation, order, invoice, or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 **“Works”** means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by VPA 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).
- 1.5 **“Worksite”** means the address nominated by the Client to which the Materials are to be supplied by VPA.
- 1.6 **“Intended Use”** means a building product and the use thereof, for which the building product is intended to be, or is reasonably likely to be, associated with a building.
- 1.7 **“Non-Conforming Building Product”** means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
- (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.8 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.9 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using VPA’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.10 **“Price”** means the Price payable (plus any GST where applicable) for the Works as agreed between VPA and the Client in accordance with clause 6 below.
- 1.11 **“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 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Works on credit shall not take effect until the Client has completed a credit application with VPA and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Works requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, VPA reserves the right to refuse delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW), the Electronic Transactions Act 2001 (ACT), (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Specifications

- 3.1 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, and weights stated in VPA’s website, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Client.
- 3.2 The Client shall be responsible for ensuring that the Materials ordered are suitable for their intended use.

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that VPA 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 VPA in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by VPA in respect of the Works.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of VPA; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

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- 4.3 In circumstances where the Client is required to place an order for Materials, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Materials (whether they are made to order Materials or not). ("**Client Error**"). The Client must pay for all Materials it orders from VPA notwithstanding that such Materials suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take delivery of such Materials. VPA is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Clients Errors.
- 5. Change in Control**
- 5.1 The Client shall give VPA 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, change of trustees, or business practice). The Client shall be liable for any loss incurred by VPA as a result of the Client's failure to comply with this clause.
- 6. Price and Payment**
- 6.1 At VPA's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by VPA to the Client in respect of Works performed or Materials supplied; or
 - (b) VPA's quoted Price (subject to clause 6.2) which shall be binding upon VPA provided that the Client shall accept VPA's quotation in writing within ninety (90) days.
- 6.2 VPA reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite, obscured building/Worksite defects, variations in quantity or volume of Materials to be supplied, incorrect measurements, plans and/or specifications provided by the Client, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, lack of required utilities, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, hard rock barriers below the surface, iron reinforcing rods in concrete or hidden pipes and wiring etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to VPA in the cost of labour or Materials which are beyond VPA's control.
- 6.3 Variations will be charged for on the basis of VPA's quotation, and will be detailed in writing, and shown as variations on VPA's invoice. The Client shall be required to respond to any variation submitted by VPA within ten (10) working days. Failure to do so will entitle VPA 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.
- 6.4 At VPA's sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by VPA, which may be:
- (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with VPA's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the Worksite but not yet installed; or
 - (c) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by VPA.
- 6.6 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and VPA.
- 6.7 VPA may in its discretion allocate any payment received from the Client towards any invoice that VPA determines and may do so at the time of receipt or at any time afterwards. On any default by the Client VPA may re-allocate any payments previously received and allocated. In the absence of any payment allocation by VPA, payment will be deemed to be allocated in such manner as preserves the maximum value of VPA's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 6.8 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 VPA nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to VPA an amount equal to any GST VPA must pay for any supply by VPA under this or any other contract 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.
- 7. Provision of the Works**
- 7.1 Subject to clause 7.2 it is VPA's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that VPA claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond VPA's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the Worksite ready for the Works; or
 - (c) notify VPA that the Worksite is ready.
- 7.3 At VPA's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 7.4 Any time specified by VPA for delivery of the Works is an estimate only and VPA 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 VPA is unable to supply the Works as agreed solely due to any action or inaction of the Client, then VPA 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.

8. Dimensions, Plans and Specifications

- 8.1 All customary industry tolerances shall apply to the dimensions and measurements of the Materials unless VPA and the Client agree otherwise in writing.
- 8.2 VPA shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client.
- 8.3 If the giving of an estimate or quotation for the supply of Materials involves VPA estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of VPA's estimated measurements and quantities before the Client places an order based on such estimate or accepts such quotation.
- 8.4 Should the Client require any changes to VPA's estimated measurements and quantities, the Client shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.

9. Worksite Access and Condition

- 9.1 VPA is not responsible for the removal of rubbish from or clean-up of the building/construction Worksite/s. All rubbish generated by VPA will be placed in a designated area appointed by the Client but the responsibility of removal of same is the Client or the Client's agent, unless otherwise agreed.
- 9.2 It is the intention of VPA and agreed by the Client that:
- (a) the Client shall ensure that VPA has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). VPA shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of VPA; and
 - (b) it is the Client's responsibility to provide VPA, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities; and
 - (c) the Client shall contact adjoining neighbours and gain their permission to remove any walls or fences on boundaries and unless otherwise agreed, it shall be the Client's responsibility to organise either temporary fencing and/or security guards to secure the Worksite during the performance of the Works by VPA and shall be liable for all costs associated in taking all reasonable precautions to protect against destruction or damage by way of vandalism or theft. Failure to comply with this clause 9.2(c) in the event that the Worksite is destroyed or damaged due to vandalism then the cost of repair or replacement shall be borne by the Client.
- 9.3 The Client agrees to be present at the Worksite when and as reasonably requested by VPA and its employees, contractors and/or agents.
- 9.4 *Worksite Inductions*
- (a) in the event the Client requires an employee or sub-contractor of VPA to undertake a Worksite induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to pay VPA's standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where VPA is in control of the Worksite, the Client and/or the Client's third party contractors must initially carry out VPA's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by **appointment only** and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by VPA.

10. Risk

- 10.1 If VPA retains ownership of the Materials under clause 15 then:
- (a) where VPA 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 VPA's address; or
 - (ii) the Materials are delivered by VPA or VPA's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where VPA is to both supply and install Materials then VPA 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.
- 10.2 Notwithstanding the provisions of clause 10.1 if the Client specifically requests VPA to leave Materials outside VPA'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.
- 10.3 The Client warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and VPA shall not be liable for any claims, demands, losses, damages, costs, and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation. If for any reason (including the discovery of asbestos or other foreign/toxic materials, dangerous access, or risk etc.), VPA reasonably forms the opinion that the Client's premises is not safe for the Works to proceed then VPA shall be entitled to suspend the Works (in accordance with clause 7.2), until VPA is satisfied that it is safe for the Works to proceed.
- 10.4 VPA reserves the right during the course of the Works to enhance each species natural growth form, (including, but not limited to thinning, pruning, and removal of deadwood, dangerous limbs or limbs for clearance).
- 10.5 The Client acknowledges that Materials supplied may:
- (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and
 - (b) expand, contract, or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.
- 10.6 Whilst every effort will be taken by VPA to match virtual colours with physical colours, VPA will take no responsibility for any variation between the virtual sale sample displayed on the Client's computer and/or the supplied Materials.

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- 10.7 Whilst VPA will take all due care during installation VPA will not accept any responsibility for tiles or pavers damaged during installation.
- 10.8 VPA reserves the right to touch-up all products supplied and installed on the Worksite to rectify minor blemishes or damage to paintwork.
- 10.9 VPA shall not be liable whatsoever for any loss or damage to the Works (including, but not limited to, surfaces) that is caused by any other tradesmen during and after the completion of the Works.
- 10.10 VPA shall not be responsible for removal of soil from the Worksite.

11. Materials

- 11.1 Where VPA requires that Materials, plant, and tools etc. required for the Works be stored at the Worksite, the Client shall supply VPA a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft, or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.
- 11.2 Unless otherwise stated elsewhere in this Contract:
 - (a) demolished materials remain the Client's property; and
 - (b) Materials which VPA brings to the Worksite which are surplus remain the property of VPA.

12. Underground Locations

- 12.1 Prior to VPA commencing any work the Client must advise VPA of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and 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 the Worksite.
- 12.2 Whilst VPA will take all care to avoid damage to any underground services the Client agrees to indemnify VPA in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.

13. Compliance with Laws

- 13.1 The Client and VPA shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any work health and safety laws (WHS) relating or any other relevant safety standards or legislation pertaining to the Works.
- 13.2 Both parties acknowledge and agree:
 - (a) to comply with the National Construction Code of Australia (NCC) and the Building Products (Safety) Act 2017 (NSW) or the Building Act 2004 (ACT), in respect of all workmanship and building products to be supplied during the course of the Works; and
 - (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 13.3 Where the Client has supplied products for VPA to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in VPA's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with state and/or territory regulations, then VPA shall be entitled, without prejudice, to halt the Works until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 6.2.
- 13.4 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.

14. Modern Slavery

- 14.1 For the purposes of this clause:
 - (a) "Act" means the *Modern Slavery Act 2018 (cth)*
 - (b) "Modern Slavery", "Modern Slavery Statement" and "Reporting Entity" have the meanings given by the Act.
- 14.2 If the Client is a Reporting Entity, it shall comply with all of its obligations under the Act.
- 14.3 Whether the Client is a Reporting Entity or not, the Client shall:
 - (a) use reasonable endeavours to identify, assess and address risks of modern slavery practices in its operations and supply chains;
 - (b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;
 - (c) use its reasonable endeavours to ensure that if at any time the Client becomes aware of Modern Slavery practices in its operations and supply chains, the Client must as soon as reasonably practicable take all reasonable steps to address or remove these practices;
 - (d) provide to VPA a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and
 - (e) within seven (7) days of VPA's request (or such longer period as VPA agrees), provide to VPA any information or assistance reasonable requested by VPA;
 - (i) concerning the Client's compliance with the Act;
 - (ii) concerning the Client's operations and supply chains;
 - (iii) to enable VPA to prepare a Modern Slavery Statement or otherwise comply with the Act; or
 - (iv) to enable VPA to assess and address risks of Modern Slavery practices in its operations and supply chains.
- 14.4 The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and VPA will be able to terminate the Contract for any breach by the Client.
- 14.5 The Client warrants that any information supplied to VPA is true and accurate and may be relied upon for the purposes of the Act.
- 14.6 The Client shall indemnify VPA against any loss or liability suffered by VPA as a result of the Client's breach of this clause 14.

15. Title

- 15.1 VPA and the Client agree that ownership of the Materials shall not pass until:
 - (a) the Client has paid VPA all amounts owing to VPA; and
 - (b) the Client has met all of its other obligations to VPA.

- 15.2 Receipt by VPA 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.
- 15.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 15.1:
- (a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to VPA on request;
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for VPA and must pay to VPA the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
 - (c) the production of these terms and conditions by VPA shall be sufficient evidence of VPA's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with VPA to make further enquiries;
 - (d) 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 VPA and must pay or deliver the proceeds to VPA on demand;
 - (e) 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 VPA and must sell, dispose of or return the resulting product to VPA as it so directs;
 - (f) unless the Materials have become fixtures the Client irrevocably authorises VPA to enter any premises where VPA believes the Materials are kept and recover possession of the Materials;
 - (g) VPA may recover possession of any Materials in transit whether or not delivery has occurred;
 - (h) 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 VPA;
 - (i) VPA may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

16. Personal Property Securities Act 2009 ("PPSA")

- 16.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 16.2 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 VPA for Works – that have previously been supplied and that will be supplied in the future by VPA to the Client.
- 16.3 The Client 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 VPA 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 16.3(a)(i) or 16.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, VPA for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of VPA;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of VPA;
 - (e) immediately advise VPA 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.
- 16.4 VPA 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.
- 16.5 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.
- 16.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 16.7 Unless otherwise agreed to in writing by VPA, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 16.8 The Client shall unconditionally ratify any actions taken by VPA under clauses 16.3 to 16.5.
- 16.9 Subject to any express provisions to the contrary (including those contained in this clause 16), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

17. Security and Charge

- 17.1 In consideration of VPA agreeing to supply the Materials, 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, and the Client grants a security interest in all of its present and after-acquired property, 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).
- 17.2 The Client indemnifies VPA from and against all VPA's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising VPA's rights under this clause.
- 17.3 The Client irrevocably appoints VPA and each director of VPA as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Client's behalf.

18. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")

- 18.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify VPA 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 VPA to inspect the Materials or to review the Works provided.
- 18.2 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**).
- 18.3 VPA acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 18.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, VPA makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. VPA's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 18.5 If the Client is a consumer within the meaning of the CCA, VPA's liability is limited to the extent permitted by section 64A of Schedule 2.
- 18.6 If VPA is required to replace any Materials under this clause or the CCA, but is unable to do so, VPA may refund any money the Client has paid for the Materials.
- 18.7 If VPA 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 VPA 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.
- 18.8 If the Client is not a consumer within the meaning of the CCA, VPA's liability for any defect or damage in the Materials is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by VPA at VPA's sole discretion;
 - (b) limited to any warranty to which VPA is entitled, if VPA did not manufacture the Materials;
 - (c) otherwise negated absolutely.
- 18.9 Subject to this clause 18, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 18.1; and
 - (b) VPA has agreed that the Materials are defective; and
 - (c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 18.10 Notwithstanding clauses 18.1 to 18.9 but subject to the CCA, VPA 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 Client failing to properly maintain or store any Materials;
 - (b) the Client using the Materials for any purpose other than that for which they were designed;
 - (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Works by the Client or any third party without VPA's prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by VPA;
 - (f) fair wear and tear, any accident, or act of God.
- 18.11 Notwithstanding anything contained in this clause if VPA is required by a law to accept a return then VPA will only accept a return on the conditions imposed by that law.
- 18.12 Subject to clause 18.1, customised, or non-stocklist items or Materials made or ordered to the Client's specifications are not acceptable for credit or return.
- 19. Intellectual Property**
- 19.1 Where VPA 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 VPA, and shall only be used by the Client at VPA's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of VPA.
- 19.2 The Client warrants that all designs, specifications or instructions given to VPA will not cause VPA to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify VPA against any action taken by a third party against VPA in respect of any such infringement.
- 19.3 The Client agrees that VPA may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which VPA has created for the Client.
- 20. Default and Consequences of Default**
- 20.1 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 VPA's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Client owes VPA any money, the Client shall indemnify VPA from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Client would be liable;
- in regard to legal costs on a solicitor and own client basis, internal administration fees, VPA's contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 20.3 Further to any other rights or remedies VPA may have under this Contract, if a Client has made payment to VPA, 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 VPA under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 20.4 Without prejudice to VPA's other remedies at law VPA shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to VPA shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to VPA becomes overdue, or in VPA'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 VPA;
- (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.

21. Cancellation

- 21.1 Without prejudice to any other remedies VPA may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions VPA may suspend or terminate the supply of Works to the Client. VPA will not be liable to the Client for any loss or damage the Client suffers because VPA has exercised its rights under this clause.
- 21.2 VPA 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 VPA shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to VPA for Works already performed. VPA shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.3 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 VPA as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.4 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.

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. Privacy Policy

- 23.1 All emails, documents, images or other recorded information held or used by VPA is Personal Information, as defined and referred to in clause 23.3, and therefore considered Confidential Information. VPA acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). VPA acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by VPA that may result in serious harm to the Client, VPA will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to VPA in respect of Cookies where the Client utilises VPA's website to make enquiries. VPA agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
 - (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to VPA when VPA sends an email to the Client, so VPA may collect and review that information ("collectively Personal Information")If the Client consents to VPA's use of Cookies on VPA's website and later wishes to withdraw that consent, the Client may manage and control VPA's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 23.3 The Client agrees for VPA to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by VPA.
- 23.4 The Client agrees that VPA 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.
- 23.5 The Client consents to VPA being given a consumer credit report to collect overdue payment on commercial credit.
- 23.6 The Client agrees that personal credit information provided may be used and retained by VPA 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.

- 23.7 VPA 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.
- 23.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 23.3 above;
 - (b) name of the credit provider and that VPA 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 (provided VPA is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and VPA has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of VPA, 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).
- 23.9 The Client shall have the right to request (by e-mail) from VPA:
- (a) a copy of the Personal Information about the Client retained by VPA and the right to request that VPA correct any incorrect Personal Information; and
 - (b) that VPA does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 23.10 VPA 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 Contract or is required to be maintained and/or stored in accordance with the law.
- 23.11 The Client can make a privacy complaint by contacting VPA via e-mail. VPA 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.

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. Trusts

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

26. Other Applicable Legislation

- 26.1 At VPA's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of Building and Construction Industry Security of Payments Act 1999 (New South Wales) and Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) may apply.
- 26.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 26.1 (each as applicable), except to the extent permitted by the Act where applicable.

27. General

- 27.1 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.
- 27.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Australian Capital Territory and are subject to the jurisdiction of the courts in that state. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).

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- 27.3 Subject to clause 18, VPA 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 VPA of these terms and conditions (alternatively VPA's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 27.4 VPA may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 27.5 The Client cannot licence or assign without the written approval of VPA.
- 27.6 VPA may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of VPA's sub-contractors without the authority of VPA.
- 27.7 The Client agrees that VPA may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to 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 VPA to provide Works to the Client.
- 27.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party.
- 27.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 27.10 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.