

1. Definitions

- 1.1 **“Acknowledgment Document”** means the document signed by the Client in conjunction with these Terms and Conditions of Trade and applicable if the Supplier elects, whereby the Client acknowledges the extent and effect of the provision of security the Client provides to the Supplier in consideration of the provision of Materials or Works.
- 1.2 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Supplier 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.
- 1.3 **“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.
- 1.4 **“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.
- 1.5 **“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 the Supplier’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.**
- 1.6 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.7 **“Intended Use”** means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with a building.
- 1.8 **“Non-Conforming Product”** means 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.
- 1.9 **“Price”** means the Price payable (plus any GST where applicable) for the Works as agreed between the Supplier and the Client in accordance with clause 6 below.
- 1.10 **“Supplier”** means Auscub Service Pty Ltd T/A Auscub Service, its successors and assigns or any person acting on behalf of and with the authority of Auscub Service Pty Ltd T/A Auscub Service.
- 1.11 **“Works”** means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Supplier 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).
- 1.12 **“Worksite”** means the address nominated by the Client to which the Materials/Works are to be supplied by the Supplier.

2. Acceptance

- 2.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Works.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges and accepts that the supply of Works on credit shall not take effect until the Client has completed a credit application with the Supplier 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, the Supplier reserves the right to refuse delivery.
- 2.6 Any advice, recommendation, information, assistance or service provided by the Supplier in relation to Materials or Works supplied (including but not limited to, profiling Works) is given in good faith to the Client, or the Client’s agent and is based on the Supplier’s own knowledge and experience and shall be accepted without liability on the part of the Supplier. Where such advice or recommendations are not acted upon then the Supplier shall require the Client or the Client’s agent to authorise commencement of the Works in writing. The Supplier shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works. Accordingly, the Supplier offer no warranty in regard to the aforementioned.
- 2.7 In the event that the Supplier is required to provide the Works urgently, that may require the Supplier’s staff to work outside normal business hours (including, but not limited to, working through lunch breaks, weekends and/or public holidays) then the Supplier reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between both parties.
- 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2011 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to the Supplier as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Materials or Works on the Client’s behalf and/or to request any variation to the Materials or Works on the Client’s behalf (such authority to continue until all requested

Ausub Service Pty Ltd T/A Ausub Service – Terms & Conditions of Trade

Works have been completed or the Client otherwise notifies the Supplier in writing that said person is no longer the Client's duly authorised representative).

- 3.2 In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise the Supplier in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier (including the Supplier's profit margin) in providing any Materials, Works or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that the Supplier 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 the Supplier 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 the Supplier in respect of the Works.
- 4.2 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 the Supplier 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. The Supplier is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

5. Change in Control

- 5.1 The Client shall give the Supplier 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 the Supplier as a result of the Client's failure to comply with this clause.

6. Price and Payment

- 6.1 At the Supplier's sole discretion, the Price shall be either:
- (a) as indicated on invoices provided by the Supplier to the Client in respect of Works performed or upon placement of an order for the Materials; or
 - (b) the Supplier's quoted Price (subject to clause 6.2) which shall be binding upon the Supplier provided that the Client shall accept the Supplier's quotation in writing as defined within the quote.
- 6.2 The Supplier reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite, obscured building/Worksite defects, incorrect measurements, plans and/or specifications provided by the Client, as a result of delays from third party suppliers, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, the rapid deterioration or collapse of the host pipe during the course of the Works, or where the state or condition of the host pipe is worse than originally anticipated, host pipe that is subject to the Works is unsuitable for lining, the excavation of rock or rock-like substances, interruption during the relining process due to the unexpected use of the host pipe resulting in the possibility that the process will need to be aborted, as a result of dewatering being required due to permanent groundwater or any interruption to the Works by the Client or any third party, 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 or during the course of the Works; or
 - (d) in the event of increases to the Supplier in the cost of labour or Materials which are beyond the Supplier's control.
- 6.3 Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Client shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier 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 the Supplier's sole discretion, a reasonable non-refundable deposit may be required upon placement of an order for Materials, in accordance with any quotation provided by the Supplier or as notified to the Client prior to the placement of an order for Materials.
- 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 the Supplier, which may be:
- (a) before delivery of the Materials; or
 - (b) on completion of the Works; or
 - (c) by way of progress payments in accordance with the Supplier'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
 - (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 the Supplier.
- 6.6 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Supplier.
- 6.7 The Supplier may in its discretion allocate any payment received from the Client towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier'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 the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify the Supplier in writing within three (3) business days, the invoice shall remain due and payable

for the full amount, until such time as the Supplier investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Supplier placing the Client's account into default and subject to default interest in accordance with clause 19.1.

- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier 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 the Supplier'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 the Supplier claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Supplier'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 the Supplier that the Worksite is ready.
- 7.3 The Supplier 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.
- 7.4 The Client shall take delivery of the Materials tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed 5%; and
 - (b) the Price shall be adjusted pro rata to the discrepancy.
- 7.5 Any time specified by the Supplier for delivery of the Works is an estimate only and the Supplier 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 the Supplier is unable to supply the Works as agreed solely due to any action or inaction of the Client, then the Supplier 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. Risk

- 8.1 If the Supplier retains ownership of the Materials under clause 14 then:
- (a) where the Supplier 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. The cost of delivery will be payable by the Client in accordance with the quotation provided by the Supplier to the Client, or as otherwise notified to the Client prior to the placement of an order for the Materials. 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 the Supplier's address; or
 - (ii) the Materials are delivered by the Supplier or the Supplier's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where the Supplier is to both supply and install Materials then the Supplier 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.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests the Supplier to leave Materials outside the Supplier'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.
- 8.3 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials. If for any reason that the Supplier, or the Supplier's employees, reasonably form the opinion that the Client's premises is not safe for the installation of Materials to proceed then the Supplier shall be entitled to delay installation of the Materials until the Supplier is satisfied that it is safe for the installation to proceed.
- 8.4 It is the Client's responsibility to advise the Supplier prior to commencement of any Works where the removal of any trees may be subject to a protection order and/or on a heritage list and warrants to ensure that the Supplier's Works will comply with the relevant restrictions, legislation and/or by-laws. The Supplier shall not be liable for any loss, expense or damage suffered by the Client in relation to the Works were resulting from the Client's non-compliance with this clause.
- 8.5 The Client acknowledges and accepts that:
- (a) the use of loud and/or heavy machinery may need to be used for the completion of the Works, and it shall be the Client's responsibility to inform the Supplier in advance of suitable times for the use of such machinery. These machines may also generate dust and smoke and therefore the Supplier recommends that windows and doors are kept shut whilst such machinery is in use. The Supplier shall not be responsible for any losses, costs or claims as a result of any damage to property from the use of the machinery unless due to the Supplier's negligence; and
 - (b) during the provision of the Works that it shall be the Client's responsibility to ensure that any children and/or pets are kept a safe distance away and/or safely secured from the nominated Worksite for their own health and safety. The Supplier accepts no liability in the event of any injury due to failure by the Client to comply with this clause.
- 8.6 It shall be the Client's responsibility to make the Worksite available on the agreed dates and times. If the Works are delayed or interrupted by the failure of the Client to adhere to the installation schedule agreed to between us both, any additional costs will be invoiced to you as per clause 6.2.
- 8.7 The operator of the equipment remains an employee of the Supplier and operates the equipment in accordance with the Client's instructions. As such the Supplier shall not be liable for any actions of the operator in following the Client's instructions.

Ausub Service Pty Ltd T/A Ausub Service – Terms & Conditions of Trade

- 8.8 The Client warrants that the plans, specifications (including CAD plans, levels, GPS readings) and other information provided by the Client to the Supplier are accurate. The Client acknowledges and agrees that in the event that any plans, specifications or information provided by the Client is inaccurate the Supplier:
- (a) accepts no responsibility or liability for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information;
 - (b) is entitled to suspend or terminate the supply of Materials or Works to the Client if there is a material change to the scope of Works as a result of inaccurate plans, specifications or other information; and
 - (c) will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised their rights under this clause.
- 8.9 The Client shall be liable for the Supplier's costs of de-mobilisation or re-mobilisation of any plant, equipment, or staff to or from the Worksite, upon the re-commencement of the Works at the Worksite, if applicable.
- 8.10 The Supplier shall not be liable for:
- (a) any additional cost for removal of plant or tree root growth presence that may occur after completion of the Works, and the Supplier can offer no guarantee against such reoccurrence; or
 - (b) any movement due to consolidation or the movement of soil below the treated surface.
- 8.11 If during the Works, the Supplier discovers:
- (a) any fossils, artefacts or any other remains of geological or archaeological interest then the Supplier reserves the right to halt all Works and immediately notify the Client. The Client accepts and agrees that all additional costs that may be incurred by the Supplier as a result of any such delays shall be borne by the Client; and
 - (b) any undisclosed waste and/or hazardous materials then the Supplier reserves the right to halt all Works and immediately notify the Client. It shall be the Client's responsibility to arrange the removal of all such materials. In the event that the Supplier agrees to remove such materials for the Client then this shall be treated as a variation in accordance with clause 6.2 and shall be in addition to the Price. The Supplier under no circumstances shall undertake the removal of asbestos.
- 8.12 The Client acknowledges and accepts that:
- (a) where the Supplier have been contracted to perform repairs:
 - (i) the Supplier are in no way remedying or repairing any damage or moisture ingress that may have been resultant, or could result, from the cracking; and
 - (ii) such repairs are in no way a guarantee (express or implied) of water tightness and must not be considered as such by the Client.
 - (b) the Supplier may not be able to ascertain the depth of, or if a void or cavity is present behind a crack without closer inspection. Any additional costs incurred by the Supplier for carrying out such investigation prior to repairing such a defect shall be invoiced as an extra. The Client also accepts that repair methods may alter as a result of any such investigation; and
 - (c) any faults with underlying surfaces or structures may affect the finish of the completed Works. The Client also accepts that where the Supplier is requested to perform remedial work on damaged structures, evidence of repairs may be apparent after the completion of the Works.
- 8.13 The Client agrees to indemnify the Supplier from any damage caused by any other tradesman during and after the completion of the Works. If the Client instructs the Supplier to rectify any damage caused by any other tradesman, this will become a variation to the original quotation and will be charged at our normal hourly rate per clause 6.2.

9. Worksite Access and Condition

- 9.1 The Supplier is not responsible for the removal of rubbish from or clean-up of the building/construction Worksite/s. All rubbish generated by the Supplier 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 the Supplier and agreed by the Client that:
- (a) the Client shall ensure that the Supplier 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). The Supplier 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 the Supplier; and
 - (b) it is the Client's responsibility to provide the Supplier, 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 the Supplier 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 the Supplier and its employees, contractors and/or agents.
- 9.4 *Worksite Inductions*
- (a) in the event the Client requires an employee or sub-contractor of the Supplier 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 the Supplier's standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where the Supplier is in control of the Worksite, the Client and/or the Client's third-party contractors must initially carry out the Supplier'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 the Supplier.

10. Underground Locations

- 10.1 Prior to the Supplier commencing any work the Client must advise the Supplier 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

Auscub Service Pty Ltd T/A Auscub Service – Terms & Conditions of Trade

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.

10.2 Whilst the Supplier will take all care to avoid damage to any underground services the Client agrees to indemnify the Supplier 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 10.1.

11. Compliance with Laws

11.1 The Client and the Supplier 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 occupational health and safety laws (OHS) or any other relevant safety standards or legislation pertaining to the Works.

11.2 Both parties acknowledge and agree:

(a) to comply with the National Construction Code of Australia (NCC) and the Home Building Contracts Act 1991, 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.

11.3 Where the Client has supplied products for the Supplier 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 the Supplier's opinion, it is believed that the products supplied are Non-Conforming products and will not conform with state and/or territory regulations, then the Supplier 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.

11.4 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.

12. Building and Construction Industry (Security of Payment) Act 2021

12.1 At the Supplier's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry (Security of Payment) Act 2021 may apply.

12.2 Nothing in this Contract is intended to have the effect of contracting out of any provisions of the Building and Construction Industry (Security of Payment) Act 2021 of Western Australia, except to the extent permitted by the Act where applicable.

13. Non-Solicitation of Worksite Personnel

13.1 During the term of this Contract and for a period of six (6) months after its termination or expiry, the Client must not, without the Supplier's prior written consent, directly solicit or deliberately tempt to leave the Supplier any employee or subcontractor of the Supplier who:

(a) was engaged by the Supplier to perform the Works on the Worksite under this Contract, including pipeline works, dam liner repairs, earthworks or associated civil works; and

(b) had direct and material involvement in the execution, supervision or project management of the Works for the Client during the six (6) months immediately preceding the alleged solicitation.

13.2 Clause 13.1 does not prohibit the Client from engaging a person where:

(a) the person responds to a genuine, non-targeted public advertisement that was not directed at the Supplier or its workforce;

(b) the Supplier has ceased to employ or engage that person for a continuous period of at least three (3) months prior to the Client's engagement;

(c) the person is engaged for work or projects unrelated to the Worksite or the Works under this Contract; or

(d) the Supplier provides written consent, which must not be unreasonably withheld.

13.3 If the Client breaches clause 13.1, the Client must pay the Supplier a placement fee equal to fifteen per cent (15%) of:

(a) the individual's gross total remuneration package actually offered by the Client for the first twelve (12) months of the engagement (excluding discretionary bonuses); or

(b) where the engagement is for a fixed term of less than twelve (12) months, fifteen per cent (15%) of the total contract value for that term; and

(c) subject to a maximum capped amount as agreed in writing between the parties.

13.4 The fee is payable within thirty (30) days of the individual commencing their engagement with the Client.

13.5 The parties agree that the fee represents a genuine pre-estimate of the Supplier's reasonable costs and losses associated with recruitment, mobilisation, safety inductions, training and workforce disruption, and is not a penalty.

13.6 Nothing in this clause:

(a) prevents any individual from earning a livelihood;

(b) restricts the Client from engaging the general labour market other than as expressly stated; or

(c) limits the Supplier's entitlement to protect its legitimate business interests in workforce stability, safety-critical experience, and project continuity.

14. Title

14.1 The Supplier and the Client agree that ownership of the Materials shall not pass until:

(a) the Client has paid the Supplier all amounts owing to the Supplier; and

(b) the Client has met all of its other obligations to the Supplier.

14.2 Receipt by the Supplier 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:

(a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Supplier on request;

(b) the Client holds the benefit of the Client's insurance of the Materials on trust for the Supplier and must pay to the Supplier 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 the Supplier shall be sufficient evidence of the Supplier's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Supplier to make further enquiries;

Auscub Service Pty Ltd T/A Auscub Service – Terms & Conditions of Trade

- (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 the Supplier and must pay or deliver the proceeds to the Supplier 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 the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs;
- (f) unless the Materials have become fixtures the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Materials are kept and recover possession of the Materials;
- (g) the Supplier 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 the Supplier; and
- (i) the Supplier 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 the Supplier for Works – that have previously been supplied and that will be supplied in the future by the Supplier to the Client.
- 15.3 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 the Supplier 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 15.3(a)(i) or 15.3(a)(ii).
 - (b) indemnify, and upon demand reimburse, the Supplier 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 the Supplier;
 - (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 the Supplier; and
 - (e) immediately advise the Supplier 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 The Supplier 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 the Supplier, 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 the Supplier 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 the Supplier agreeing to supply the Materials and/or provide its Works, the Client grants the Supplier a security interest by way of a floating charge (registerable by the Supplier pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, including without limitation any assets identified in an Acknowledgment Document (if any), to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Materials and/or Works under this Contract and/or permit the Supplier to appoint a receiver to the Client in accordance with the Corporations Act 2001 (Cth). The security interest arises upon the Client's acceptance of these terms and is not conditional on the existence of any Acknowledgment Document.
- 16.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 16.3 As a separate and continuing security, in the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 14.1, 15.2 and 16.1 as applicable and is deemed insufficient by the Supplier to secure the repayment of monies owed by the Client to the Supplier, the Client hereby grants the Supplier a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The Client must, upon request, provide all information the Supplier reasonably requires to identify and describe such property (including title particulars). This clause operates whether or not any Acknowledgment Document exists.

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 the Supplier 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

Auscub Service Pty Ltd T/A Auscub Service – Terms & Conditions of Trade

- alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Supplier 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 The Supplier 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, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. The Supplier'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, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.
- 17.6 If the Supplier is required to replace any Materials under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Client has paid for the Materials.
- 17.7 If the Supplier 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 the Supplier 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, the Supplier'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 the Supplier at the Supplier's sole discretion;
 - (b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Materials; and/or
 - (c) otherwise negated absolutely.
- 17.9 Subject to this clause 17, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 17.1;
 - (b) the Supplier has agreed that the Materials are defective;
 - (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.
- 17.10 Notwithstanding clauses 17.1 to 17.9 but subject to the CCA, the Supplier 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 the Supplier's prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by the Supplier; and/or
 - (f) fair wear and tear, any accident, or act of God.
- 17.11 In the case of second-hand Materials, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second-hand Materials prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Supplier as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that the Supplier has agreed to provide the Client with the second-hand Materials and calculated the Price of the second-hand Materials in reliance of this clause 17.11.
- 17.12 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return, then the Supplier will only accept a return on the conditions imposed by that law.
- 17.13 Subject to clause 17.1, customised, or non-stocklist items or Materials made or ordered to the Client's specifications are not acceptable for credit or return.
- 18. Intellectual Property**
- 18.1 Where the Supplier 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 the Supplier, and shall only be used by the Client at the Supplier's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.
- 18.2 The Client warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- 18.3 The Client agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Supplier 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 the Supplier'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 the Supplier any money, the Client shall indemnify the Supplier 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 incurred in exercising the Supplier's rights under these terms and conditions, internal administration fees, the Supplier'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.

Auscub Service Pty Ltd T/A Auscub Service – Terms & Conditions of Trade

- 19.3 Further to any other rights or remedies the Supplier may have under this Contract, if a Client has made payment to the Supplier, 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 the Supplier 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 Contract.
- 19.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment when it falls due;
 - the Client has exceeded any applicable credit limit provided by the Supplier;
 - 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
 - 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 the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("**the Breaching Party**") the other party may suspend or terminate the supply or purchase of Materials and/or Works to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 20.2 If the Supplier, due to reasons beyond the Supplier's reasonable control, is unable to deliver any Materials and/or Works to the Client, the Supplier may cancel any Contract to which these terms and conditions apply or cancel delivery of Materials and/or Works at any time before the Materials and/or Works are delivered by giving written notice to the Client. On giving such notice, the Supplier shall repay to the Client any money paid by the Client for the Materials and/or Works. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 The Client may cancel delivery of the Materials and/or Works by written notice served within forty-eight (48) hours of placement of the order. If the Client cancels delivery in accordance with this clause 20.3, the Client will not be liable for the payment of any costs of the Supplier, except where a deposit is payable in accordance with clause 6.4.
- 20.4 However, 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 Policy

- 21.1 All emails, documents, images or other recorded information held or used by the Supplier is Personal Information, as defined and referred to in clause 21.3, and therefore considered Confidential Information. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Supplier that may result in serious harm to the Client, the Supplier 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.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to the Supplier in respect of Cookies where the Client utilises the Supplier's website to make enquiries. The Supplier 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:
- IP address, browser, email client type and other similar details;
 - tracking website usage and traffic; and
 - reports are available to the Supplier when the Supplier sends an email to the Client, so the Supplier may collect and review that information ("collectively Personal Information").
- If the Client consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Client may manage and control the Supplier's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 21.3 The Client agrees for the Supplier 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 the Supplier.
- 21.4 The Client agrees that the Supplier may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- to assess an application by the Client; and/or
 - to notify other credit providers of a default by the Client; and/or
 - 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
 - to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 21.5 The Client consents to the Supplier being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 21.6 The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):
- the provision of Works; and/or
 - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
 - 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.
- 21.7 The Supplier may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report; and/or
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 21.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 21.3 above;
 - (b) name of the credit provider and that the Supplier 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 the Supplier 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 the Supplier has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of the Supplier, the Client has committed a serious credit infringement; and/or
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 21.9 The Client shall have the right to request (by e-mail) from the Supplier:
- (a) a copy of the Personal Information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information; and
 - (b) that the Supplier does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 21.10 The Supplier 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.
- 21.11 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier 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. Service of Notices

- 22.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission; or
 - (e) if sent by email to the other party's last known email address.
- 22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

23. Trusts

- 23.1 If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Client covenants with the Supplier as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and 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; and
 - (c) the Client will not during the term of the Contract without consent in writing of the Supplier (the Supplier 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 fund or trust property.

24. General

- 24.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.2 These terms and conditions and any Contract to which they apply shall be governed by the laws of Western Australia 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).
- 24.3 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- 24.4 The Client cannot licence or assign without the written approval of the Supplier.

Ausub Service Pty Ltd T/A Ausub Service – Terms & Conditions of Trade

- 24.5 The Supplier 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 the Supplier's sub-contractors without the authority of the Supplier.
- 24.6 The Client agrees that the Supplier 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 the Supplier to provide Works to the Client.
- 24.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to the Supplier, once the parties agree that the Force Majeure event has ceased.
- 24.8 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.
- 24.9 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.
- 24.10 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.