



**Peace of Mind, Right on Time**

## Terms and Conditions of Business

H.L. Mullane & Son Pty Ltd ACN 000 541 284 and associated, related, subsidiary and parent companies, successors and assigns including Mullane Maintenance Pty Limited ACN 106 414 153

Mullane Construction Plumbing Pty Limited ACN 118 292 176

Mullane Administration Pty Limited ACN 158 943 787

Prophase Electrical Solutions Pty. Ltd. ACN 612 155 432

Mullane Infrastructure Pty Limited ACN 074 883 980

("Mullane")

16 Old Maitland Road, Sandgate NSW 2034 (Head Office, Newcastle)

14 Stockyard Place, West Gosford NSW 2250 (Central Coast Office)

Customer Support and Sales Phone: 1300 608 999

Email: [enquiries@mullane.com.au](mailto:enquiries@mullane.com.au)

Website: [www.mullane.com.au](http://www.mullane.com.au)

These are the entire Terms and Conditions for all goods and services supplied by Mullane and its associated, related, subsidiary and parent companies, successors and assigns ("the Supplier").

### Glossary

#### 1. DEFINITIONS AND INTERPRETATION

**Additional Expenses** means any disbursements, duties, fees and taxes (including GST) imposed by these Terms, including delivery and freight charges, merchant fees, administration fees, permit and licence fees, scaffolding or fence hire charges, material removal fees, installation fees, storage fees and environmental levies.

**Credit Account** means the approved commercial account You have with Us to purchase Goods and Services on credit pursuant to these Terms.

**Customer** means any person, firm or company placing an Order with Us for the purchase of Services pursuant to these Terms, including Your associated, related, subsidiary and parent companies, successors and assigns. The Customer includes the individual person signing these Terms and placing Orders with Us (all of which are referred to as "You" and "Your").

**Due Date** means the date listed on Our invoice for Your payment of Goods, Services and Additional Expenses.

**Equipment** means any of Our plant, motor vehicles, tools, appliances, machinery and other equipment that We use to supply the Services.

**Force Majeure** means something outside a party's reasonable control, including war, strikes, lockouts, epidemics and pandemics, industrial disputes or civil unrest, government restrictions or intervention, transport delays, fire, act of God, storm or flood, theft and vandalism.

**Goods** means products, parts, materials and merchandise supplied by Us to You pursuant to any Quote, Order and/or these Terms.

**Insolvency Event** means any circumstances where We reasonably believe that You are unable to pay Your debts as and when they fall due or You have suffered a material adverse change in Your financial circumstances.

**Loss** means any claim, demand, cause of action, loss and damage, liability, costs (including legal costs on an indemnity basis), expenses (including any GST payable) and is not limited by the Losses which were contemplated by the parties at the time of entering into these Terms.

**Order** means a request to purchase Goods and Services placed by You.

**PPSA** means:

- (a) the *Personal Property Security Act 2009* (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of the PPS Act.

**Quote** means Our written description and price of the Goods and Services to be supplied to You, valid for 30 days.

**Services** means professional trade services provided by Us to You pursuant to any Quote, Order and these Terms, including but not limited to plumbing, drainage, civil infrastructure, gas, roofing, electrical and other services.

**Site** means any place at which You request Goods and Services to be supplied.

**Supplier** means the entity or entities specified in these Terms as supplying Goods and Services to You and includes any associated, related, subsidiary and parent companies, successors and assigns (all of which are referred to as "Us", "We" and "Our").

**Website** means [www.mullane.com.au](http://www.mullane.com.au) as redirected from time to time.

In these Terms:

- (a) a reference to Terms means these terms and conditions of business;
- (b) a Business Day is any day except Saturday, Sunday or a public holiday in the location where the Goods and Services are being supplied;
- (c) a reference to writing includes email and any communication through Our website;
- (d) a reference to a clause or paragraph is a reference to these Terms;
- (e) a reference to a party to these Terms or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (f) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (g) headings and any explanatory notes and paragraphs are for ease of reference only and do not affect the meaning or interpretation of these Terms;
- (h) a reference to 'including' does not convey any limitation and should be interpreted as if the word 'without limitation' also appear; and
- (i) if these Terms require something to be done on a day that is not a Business Day (for example, payment or notice), then it must be done on the preceding Business Day.

## Framework of these Terms

### 2. THIS AGREEMENT AND OUR RELATIONSHIPS

- (a) These are the entire terms and conditions of all Goods and Services supplied by Us to You. Except where the parties agree otherwise (which must be by a duly authorised officer and in writing) or where We list special conditions on any Quote or Order, these Terms apply notwithstanding any provisions to the contrary appearing on any other document.
- (b) You warrant that You have obtained all the necessary authorisations to enter into and perform the contract created by these Terms. You warrant that any person signing these Terms or instructing Us as to the Goods and Services has Your authority and power to do so.
- (c) You accept these Terms by signing and returning a copy of them to Us or by other conduct, for example by oral acceptance, making an Order, or by instructing Us to commence or continue supplying Goods and Services.
- (d) You engage Us to provide Goods and Services strictly as an independent contractor. We are not engaged as Your employee, partner, agent, joint venture or franchisee, nor is any other person working at Our direction.
- (e) You must keep all information about the Goods and Services confidential. You must not disclose any information about the Goods and Services through any communications media without Our written consent.
- (f) These Terms are interpreted according to the laws of the State or Territory as We may determine in Our sole discretion. Proceedings by either party may be commenced and/or continued in the State or Territory We determine in Our sole discretion. If We do not make any determination, You consent to any proceedings being commenced and heard by a Court in the State of New South Wales applying the laws of that State.

### 3. CHANGES AND UPDATES TO THESE TERMS

- (a) From time-to-time, and at any time, We may update or alter these Terms.
- (b) We will provide You with 7 days' written notice of any updated or altered Terms and any such Terms will apply to all Orders from the date of alteration.
- (c) You must notify Us in writing of any material change to Your organisation, including a change of director, bank account details or change of address.
- (d) We may assign and transfer all or any of Our title, estate, interest, benefit, rights, duties and obligations in these Terms to any person, provided that the assignee agrees to assume any of Our duties and obligations owed to You in these Terms.
- (e) You must not assign, transfer, charge, encumber or otherwise deal with any of Your rights and obligations under these Terms, or attempt or purport to do so, without Our prior written consent.

## Ordering and Supplying

### 4. PRICES, QUOTATIONS AND ORDERS

- (a) You may purchase Goods and Services by placing an Order with Us verbally or in writing. You warrant that the person who places the Order is authorised by You to do so.
- (b) We may accept or decline any Order by notifying You in writing or by supplying the Goods and Services to You.
- (c) We may require You to pay a deposit for Goods and Services before accepting Your Order.
- (d) The parties agree that these Terms apply to all Orders for the supply of Goods and Services.
- (e) We may issue a Quote to You, but a Quote is not an offer by Us to

supply Goods and Services to You.

- (f) We may vary or cancel any Quote before an Order is accepted.
- (g) You cannot cancel an Order after acceptance without Our written consent and at Our absolute discretion.
- (h) Prices specified on any of Our price lists are subject to change without notice to You. You will be charged in accordance with the price that is current at the time You place Your order.
- (i) Unless the parties agree differently in writing, the price You must pay for Goods and Services is specified in Our invoice and may include Additional Expenses.
- (j) We have the right to change the price of Goods and Services supplied under these Terms in the following ways:
  - i) Before accepting any Order or request for a Quote, without notice to You;
  - ii) Where any ground conditions of a Site differ from what We have quoted You, in which case We will apply the applicable price;
  - iii) In any other circumstance, We will provide you with 7 days' notice of any price or rate changes.

### 5. SUPPLY AND DELIVERY

- (a) Specifications for the Goods and Services being supplied under these Terms are contained in the Orders You submit from time-to-time.
- (b) The Services are supplied to You with all due skill and care in accordance with Our professional standards.
- (c) You acknowledge and agree that:
  - i) Our Services are supplied within the limitations of the project, solution, tasks, activities, circumstances, or other scope of work that We have agreed to carry out;
  - ii) We are entitled to rely on the accuracy and completeness of the information (written or oral) provided to or obtained by Us, whether the information is provided by or obtained from You, Your officers or staff, or Your advisors or consultants;
  - iii) The Services are based on information that is made available or is available to us at the time. You acknowledge and agree that actual results may be different from any objectives, budgets, projections or forecasts since unanticipated or unexpected events frequently occur and the variation may be material; and
  - iv) You must promptly notify Us of any change in information which could have a material impact on the Services or if anything occurs after information is provided to Us which renders such information untrue, unfair or misleading.
- (d) The method of delivering Goods is at Our sole discretion. At any time, We may appoint an agent to perform Our delivery obligations of these Terms.
- (e) You authorise Us to:
  - i) supply Goods, Equipment and Services to the nominated Site;
  - ii) leave Goods and/or Our Equipment at the Site, whether or not any person is there to accept delivery.
- (f) We are not obliged to obtain a signed receipt, delivery docket or other acknowledgement that any Goods have been delivered. But if a signed receipt, delivery docket or other acknowledgement is obtained, You agree that document is conclusive evidence of Your acceptance that any Goods have been delivered
- (g) All delivery times indicated by Us are estimates only. Delivery times are subject to Goods, Equipment and Services being available, Our reasonable ability to deliver on that date, and receiving co-operation from You and other organisations to supply the Goods and Services. We will endeavour to deliver Goods and Services at the time you need, but if We fail to deliver within a specified time or We fail to deliver any instalment, You are not allowed to cancel Your Order, refuse to accept delivery or refuse to pay for what We have supplied.
- (h) You agree to inspect and examine Goods immediately on delivery.
- (i) Delivery occurs when Goods are delivered to Your Site (in respect of Goods), or when Services are completed at Your Site (in respect of

Services). When delivery occurs Our obligation to supply and deliver is discharged.

## Managing Certain Risks

### 6. YOUR OBLIGATIONS FOR THE SERVICES

- (a) To facilitate Our supply of Goods and Services, You must do all things that We reasonably require.
- (b) Such obligations may differ depending on the specifications of the Order or Site that We advise from time to time, but may include the following:
  - i) Locating and advising Us of existing services at the Site prior to the Services being supplied;
  - ii) Adequately and safely preparing the Site before Our staff arrive;
  - iii) Providing, erecting and maintaining all amenities required at the Site, including barricades, guards, fencing, temporary roadways and footpaths, shed, toilets, workrooms, signs and lighting;
  - iv) Providing and maintaining a Site that is compliant with occupational health and safety legislation and fully insured for Our (or Our agents, employees or contractors) safe use and supply of the Services;
  - v) Providing accurate and complete instructions, specifications, Site measurements and information that We reasonably require to provide the Services;
  - vi) Facilitating full access to the Site and all resources that are reasonably necessary for Us to supply the Services, including plans, designs, plans, files, records, information technology systems, premises, facilities, licenses and permits, people with the relevant skills and experiences, and third parties where applicable;
  - vii) Providing adequate storage and protection for all Goods and Equipment at the Site; and
  - viii) Providing all certificates, warranties and technical manuals reasonably necessary.

### 7. RISK AND OWNERSHIP

- (a) Legal ownership of any Goods does not pass to You until We have received all amounts owing by You on any account whatsoever with Us, including any Additional Expenses.
- (b) Until legal ownership of the Goods passes to You, all Goods are held by You for Us as bailee only. You must store the Goods separately from Your own or anyone else's Goods. Storage must be in a way that clearly identifies the Goods as Our property and prevents the Goods from being damaged or spoiled.
- (c) You may resell any Goods before legal ownership passes to You, provided that You:
  - i) Resell the Goods to a third party in the ordinary course of business;
  - ii) Act in any transaction as Our fiduciary agent;
  - iii) Hold the proceeds of sale of Goods on trust for Us and in a separate account with separate records;
  - iv) Account to Us for those proceeds or any other payment made by a third party for any sale of the Goods; and
  - v) Allow us to inspect any records of any payments received for Goods.
- (d) You allow Us to leave Our Equipment on Site for the purpose of providing the Services.
- (e) Legal ownership of Equipment does not pass to You whatsoever. Even if You go into external administration during the Services, We retain title to the Equipment at all times.
- (f) You acknowledge and agree that You have no rights to Our Equipment whatsoever. You must not use, offer, sell, assign, sub-let, mortgage, pledge or otherwise deal with Our Equipment in any way.
- (g) We may possess Our Equipment at any time and wherever it is located. You irrevocably grant Us (including Our agents or any other

nominated representative) an unrestricted right and licence to enter any Site or premises occupied by You without notice for the purpose of identifying and possessing Our Equipment. We reserve these rights without being liable to You or any other third party in any way.

## How We Get Paid

### 8. PAYMENT

- (a) Unless the parties agree otherwise in writing, You must pay for Goods, Services and any Additional Expenses by the Due Date.
- (b) All amounts payable by You for Goods and Services are inclusive of GST (unless expressly stated otherwise). You must pay Us GST imposed on any supply of Goods and Services.
- (c) At Our discretion, We may require payment (including part payment or a deposit) for the Goods and Services before any Order or Quote is processed and fulfilled.
- (d) Payment must be made in a method approved by Us. There may be Additional Expenses associated with Your chosen payment method, such as reasonable surcharges. Cash in hand payments are not permitted.
- (e) We may credit any payments received from You against any interest charges and costs first, and all such charges will be payable on demand.
- (f) If You do not pay for Goods and Services by the Due Date, We may:
  - i) Charge \$30 administrative fee per month on overdue account.
  - ii) Require You to pay cash on delivery of any further Goods and Services, or suspend or cease supplying Goods and Services to You;
  - iii) Demand Your immediate payment of all outstanding monies;
  - iv) Credit any payments received from You first against any interest charges and costs and all such charges will be payable on demand; and
  - v) Preclude You from participating in any special deals, discounts, bonus payments redemptions, rebates and all other incentive programs until Your account is no longer overdue.
- (g) If You believe You have a set-off or claim against Us (including any query, dispute or claim), You cannot withhold any payment on that basis without Our prior written consent.
- (k) You may not withhold, set-off or apply retention money or liquidated damages against Our invoices without Our prior written consent. If We do give such written consent, We may specify a maximum amount of retention money or liquidated damages that You may withhold, set-off or apply (either by a percentage or dollar amount).

### 9. CREDIT ACCOUNTS

- (a) You may apply for a Credit Account with Us to purchase Goods and Services. We have no obligation to provide or continue providing credit facilities to You. You are not entitled to credit facilities until You receive an approved Credit Account with Us.
- (b) A Credit Account must only be used by You and it cannot be assigned, transferred or made available for use by any other entity or person (including by a subsequent purchaser of You) without Our prior written consent.
- (c) Any credit limit placed on Your Credit Account is for Our administrative purposes only and does not constitute a term of this or any other contract You have with Us.
- (d) If You exceed the credit limit placed on Your Credit Account, We may require You to make immediate payment on Your Credit Account to reduce the surplus credit limit before accepting any further Orders.
- (e) You authorise Us to debit Your Credit Account with the price of Goods and Services supplied to You and all other amounts owed by You (including Additional Expenses and interest payable under these Terms).
- (f) We may apply any payments You make to Us towards any debt You owe Us. We may also set-off any credit amount that We owe to You against any debt owed to Us by You.

- (g) Time is of the essence in relation to these sections 8 and 9. These sections survive expiry or termination of these Terms.

## How We Secure Payment

### 10. SECURITY OVER REAL ESTATE

- (a) To secure payment of all monies You owe Us for the supply of Goods and Services, You:
- i) Charge all of Your interest in real and personal property (including all property acquired after the date of these Terms) in favour of Us, whether or not a demand has been made on You ("**Charge**"). This Charge constitutes a General Security Agreement for the purposes of the PPSA;
  - ii) Authorise and consent to Us taking all actions necessary to give effect to the Charge, including the lodgement of a caveat upon any title of Your real property, whether held in Your own right or as trustee of any trust, or any other security document; and
  - iii) Agree to deliver to Us within 7 days of written demand a Memorandum of Mortgage in registrable form. You agree that any amount payable to Us payable on demand incorporating the covenants contained in Memorandum No. Q860000 registered at the Land Registry Services New South Wales as amended to comply with and reflect any appropriate laws in the jurisdiction(s) where You have any beneficial interest in real and personal property and as amended appropriately to comply with any formal requirements of registration; and
  - iv) Irrevocably appoint Us and any person nominated by Us severally as Your attorney, with power to execute, sign and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) such caveat, mortgage or other security document to effect the Charge granted under this part.

### 11. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

- (a) These Terms constitute a general security agreement for the purposes of the PPSA ("**Security Agreement**") and create a security interest in the Goods to secure payment for the Goods ("**Security Interest**").
- (b) Each supply of Goods by Us under these Terms is subject to the Security Agreement for the purposes of the PPSA.
- (c) We may lodge a financing statement on the Personal Property Securities Register ("**PPSR**") in respect of the Security Interest in the Goods pursuant to these Terms and in the proceeds of supply of the Goods, including as a purchase money security interest (as that term is defined in the PPSA) ("**PMSI**"), pursuant to these Terms.

#### Assurances

- (d) You must do all things, provide all information and sign all documents that are necessary and reasonably required to enable Us to acquire a perfected Security Interest in the Goods, including for the purposes of:
- i) Ensuring that any Security Interest created under, or provided for, by these Terms:
    - a. Attaches to the Goods that are intended to be covered by that Security Interest; and
    - b. Is enforceable, perfected and otherwise effective; and
    - c. Has the priority required by Us.
  - ii) Enabling Us to prepare and register a financing statement or financing change statement;
  - iii) Enabling Us to register a PMSI pursuant to the PPSA; and
  - iv) Enabling Us to exercise and maintain any of the Our rights or powers in connection with any such Security Interest.
- (e) If You dispose of the Goods, You must:
- i) Immediately pay any proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as specified by subsection 14(6)(c) of the PPSA, unless otherwise specified by Us in writing; and

- ii) Not allow any other charge or security interest to exist over those proceeds without Our written consent if that security interest could rank ahead of Our Security Interest.
- (f) If a higher-priority security interest does arise in the Goods despite Your obligations under this section, You must:
- i) Ensure that You receive cash proceeds for the Goods of at least equal to the market value of the Goods; and
  - ii) Immediately pay those proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as We see fit.
- (g) You must not change Your name, structure, status or partnership, or assign or sell Your business to another party, or initiate any change to any registered documentation, or act in any other manner which would impact on Our registered Security Interest without Our prior written consent. You agree that Your liability under these Terms is not affected by such an event until a new application for credit in Your new entity name as restructured or changed is made and approved by Us in writing.

#### Exclusion of Notices and Other Obligations

- (h) To the extent permitted by law and for the purposes of sections 115(1) and 115(7) of the PPSA:
- i) We do not need to comply with sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d) or 132(4); and
  - ii) Sections 142 and 143 are excluded;
  - iii) For the purposes of section 115(7) of the PPSA, We do not need to comply with sections 132 and 137(3).
- (i) To the extent permitted by law, You agree to waive:
- i) Your rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or a receiver exercises a right, power or remedy; and
  - ii) Any time period that must otherwise lapse under any law before a secured part or a receiver exercises a right, power or remedy.
- (j) If the law that requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

#### Provision of Information

- (k) You agree not to exercise Your rights to make any request of Us under section 275(6) of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (l) The parties must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances where:
- i) Disclosure is required by sections 275(7)(b) to (e) of the PPSA; and/or
  - ii) We disclose information of a kind mentioned in section 275(1) of the PPSA to the extent that We are not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.
- (m) Notwithstanding the obligations of this section, You shall only authorise the disclosure of information for the purposes of section 275(7)(c) of the PPSA, or request information under section 275(7)(d) of the PPSA, if We approve such disclosure or request for information in writing.
- (n) Nothing in this part prevents any disclosure of information by Us that We believe is reasonably necessary to comply with any other obligations that We may have under the PPSA.

#### Other

- (o) If You default in the timely performance of any obligation owed to Us, We may enforce the Security Interest by exercising all or any of Our rights under these Terms, the general law and the PPSA.
- (p) Nothing in this part limits or is limited by any other provision of these Terms and Conditions or any other agreement between the parties.

## What is Excluded, Limited and Indemnified

### 12. WARRANTIES AND EXCLUSIONS

- (a) If the Goods and Services have a value or are of a kind ordinarily acquired for personal, domestic or household use or consumption such as to attract to these Terms the operation of the Competition and Consumer Act 2010 (Cth) and Schedule 2 Australian Consumer Law ("the Act"), certain conditions and warranties will be implied into these Terms and certain rights and remedies will be conferred on You which cannot be excluded, restricted or modified by agreement. Neither party excludes or limits the application of any statute (including the Act), where to do so would contravene such statute or cause any provision of these Terms to be void.
- (b) However, We predominantly deal with commercial customers purchasing Goods and Services for business purposes and do not deal with consumers (as that term is defined in the Act). To the extent permitted by Law and unless otherwise agreed between the parties, when purchasing Goods and Services from Us You warrant that You are a commercial customer and acknowledge that the Australian Consumer Law may not apply to Goods and Services supplied by Us.
- (c) Except as expressly set out in the Act, these Terms or a separate warranty document, We make no warranties or other representations under or in connection with these Terms, and Our liability in that respect is limited to the fullest extent permitted by law. Any warranties for Goods supplied are limited to the warranties given by the manufacturer only.
- (d) You are responsible for ensuring that the Goods and Services are suitable for Your intended use. We make no representations or warranties as to the condition, quality, sample, description, fitness or suitability for any purpose of the Goods and Services (whether express or implied and even if that purpose is made known to Us). You agree that You have not relied on any inducement, representation or statement made by or on behalf of Us in purchasing the Goods and Services.
- (e) To the extent permitted by law, all other implied conditions and warranties are excluded.

### 13. LIMITATION OF LIABILITY

- (a) If We are lawfully allowed to limit our liability to You in respect of the Goods and Services, then Our liability to You is limited Our choice of:
  - i) re-supplying the Goods and/or Services; or
  - ii) repairing the Goods, or paying the cost to repair the Goods; or
  - iii) reimbursing some or all of the invoice value paid by You for the Goods and Services.
- (b) Our total liability to You (including but not limited to Our breach of these terms, tort law or negligence) will not exceed the price of the Goods and Services supplied by Us, to the extent that is permitted by law.
- (c) We are not liable to You for any loss of profits, loss of sales, loss of market or opportunity, loss of goodwill or reputation, third party claims, incidental or special damages, indirect or consequential loss of any kind.
- (d) We are not responsible for any damage to land, property or person that occurs at a Site during the Services, unless such Loss is directly caused by Us or Our Equipment.
- (e) Neither party will be liable for any breach of these Terms which is wholly or partly caused by a Force Majeure event. This exclusion does not include Your obligation to pay for the Goods, Services and any Additional Expenses.
- (f) We are responsible for all defects, except usual wear and tear, for a period of 12 months only after the date of Practical Completion unless otherwise agreed via contract.

### 14. INDEMNITIES

- (a) To the extent permitted by law, You indemnify Us against and You

must pay Us for any Loss that We may suffer or incur as a result of any act or omission by You (or any entity or person that You are responsible for) in relation to the Goods and Services and/or these Terms, including Your breach of these Terms, Your negligence, Your failure to perform the obligations in these Terms and any claim made by You against Us.

- (b) Specifically, You must hold Us harmless from, indemnify Us for and pay Us for:
  - i) All reasonable legal costs which We incur as a result of any breach, act or omission by You under these Terms, however that breach, act or omission arises. This includes legal or mercantile agent fees on an indemnity basis in the recovery or attempted recovery of any overdue amount for Goods and Services and any action taken to secure any charge;
  - ii) Any stamp duty or other government rates, taxes (including GST) or charges levied on or in connection with Your supply of Services;
  - iii) Any Loss We incur as a result of You cancelling your Order after 24 hours, including but not limited to any Additional Expenses;
  - iv) All costs associated with the registration, maintenance and withdrawal of any Security Interest created under these Terms;
  - v) Any and all Loss arising out of damage to Our Equipment on Site (including any loss of or damage to property or person) except to the extent that such Loss is caused by Our negligence or breach;
  - vi) Any and all Loss arising out of Your (or Your agent, employee, contractor or other representative's) attendance at Our premises or the Site;
  - vii) Any and all Loss (including any personal injury or death) arising out of Your failure to provide a safe, suitable and compliant Site for the Goods and Services to be delivered and supplied, except to the extent that such Loss is a direct result of Our negligence, breach of the law or breach of the Terms;
  - viii) Any liability that We incur in connection with Our reliance on information provided by You or on Your behalf which is inaccurate, incomplete or misleading, or Your failure to provide Us with relevant information.
- (c) This indemnity is a continuing obligation which is separate and independent from your other obligations under these Terms or at law and this indemnity survives termination of these Terms. For clarity, this indemnity does not apply to Loss which is caused by Our breach of these Terms.

## Ending the Agreement

### 15. DISPUTE RESOLUTION

- (a) If a dispute arises between the parties, the following procedure applies:
  - i) Either party may give the other a notice of the dispute. This means that the dispute must be dealt with in accordance with this section;
  - ii) Either party must not commence legal proceedings (except proceedings seeking interlocutory relief) about the dispute unless the dispute has been referred for resolution under this paragraph;
  - iii) Either party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute, pending the completion or termination of the procedure set out in this paragraph;
  - iv) If a dispute is notified, each party must immediately refer the dispute to its senior management. Those representatives must endeavour to resolve the dispute as soon as possible, but at least within 30 days (or other period as agreed between the parties);
  - v) At Our sole discretion, We may elect to resolve any dispute by

mediation via the Australian Disputes Centre (**ADC**) before commencing arbitration or litigation. The mediation must be conducted in accordance with the ADC Guidelines for Mediation which operate at the time the matter is referred to ADC. The ADC Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. This paragraph survives termination of these Terms;

- vi) The parties must continue to perform their respective obligations under these Terms, even if a dispute exists (including the referral of the dispute to mediation);
- vii) The parties must keep all information relating to any dispute confidential for the purposes of dispute resolution, unless otherwise required by law or at the direction of a court of competent jurisdiction. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

## 16. TERMINATION

- (a) By giving You written notice, We can:
  - i) Suspend or cancel supply of Goods and Services (including or any current Order for Goods and Services);
  - ii) Suspend or terminate Your Credit Account;
  - iii) Require immediate payment of the balance of any Credit Account, invoices or any other amounts due and payable whether or not the Due Date has expired;
  - iv) Register a default with any credit reporting agency, where applicable;
  - v) Enforce Our rights under any Security Interest;
  - vi) Suspend or terminate the contract created by these Terms (collectively "**Our Termination Rights**").
- (b) We can exercise Our Termination Rights immediately when:
  - i) You have not paid for Goods, Services and any Additional Expenses by the Due Date;
  - iii) You exceed the limit of Your Credit Account;
  - iv) You breach a material term of these Terms;
  - v) Either of the parties suffer a Force Majeure Event which delays or prevents performance of the whole or any part of these Terms;
  - vi) You allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against Your property including under the PPSA;
  - vii) You engage in illegal activity related to the Goods, Equipment and Services;
  - viii) You engage in conduct which, in Our reasonable opinion, may damage Our goodwill or reputation;
  - ix) An Insolvency Event occurs.
- (c) In any other situation, We may terminate by giving You
- (d) You may terminate the agreement created by these Terms immediately by 14 days' written notice if We are in breach of a material term of these Terms and We do not rectify the breach within 14 days of Your written notice.
- (d) On termination We may:
  - i) recover any of Our Goods, Equipment, property, materials and all related data, documentation and records from You and You must return all such things on demand;
  - ii) recover all sums payable by You under these Terms;
  - iii) subject to any applicable limitation of liability, recover from You the amount of any Loss sustained as a consequence of the termination, including loss of the benefits which the performance of these Terms would have conferred on Us;
  - iv) be regarded as discharged from any further obligations under these Terms; and
  - v) pursue any additional or alternative remedies provided by law.

## General Information

### 17. GENERAL

- (a) Any clauses which are expressed to be or are, by their nature, intended to survive expiry or termination of these Terms will survive expiry or termination of these Terms for any reason.
- (b) A failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (c) If any provision (whole or part) of these Terms is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If modification is not possible, the relevant provision (whole or part) will be deleted. Any modified or deleted provision will not affect the validity and enforceability of the rest of these Terms.
- (d) These Terms may be executed in any number of counterparts, each of which when executed and delivered constitutes a duplicate original, but all counterparts together constitute one agreement.
- (e) In addition to any other method of service provided by law, a notice may be sent by prepaid post, facsimile, email or courier to the address of a party as that address set out in the Contract or subsequently notified. A notice has no legal effect unless it is in writing.
- (f) A notice is deemed to have been delivered and received on the day if by hand, courier, email or fax, or otherwise on the second business day after posting.

### 18. PRIVACY

- (a) We may collect personal and credit information in Our dealings with You (or any of Your guarantors) in accordance with Our Privacy Statement, Privacy Policy, Credit Reporting Policy and Statement of Notifiable Matters pursuant to the Credit Reporting Code, the Privacy Act 1988 (Cth), the *Privacy (Enhancing Privacy Protections) Act 2012*, and the Australian Privacy Principles. You consent to that information being collected. You can obtain a copy of Our Privacy Statement, Privacy Policy, Credit Reporting Policy and Statement of Notifiable Matters by contacting Us in writing or by visiting Our Website.

### 19. ELECTRONIC COMMUNICATIONS

- (a) You agree to receive Invoices via email.
- (b) You agree to accept service of notices under the Building and Construction Industry Security of Payment Act 1999 (NSW) as amended from time to time, or any like or similar legislation that may be applicable in the State or Territory where the Services were delivered to You, via e-mail (in addition to any and all other forms of service authorised under the legislation, or regulations made by the Act).
- (c) You agree that email communications from Us to You constitute an "electronic communication" within the meaning of the Electronic Transactions Act 2000 (NSW) ("the Act").
- (d) You agree that the receipt and service of notices via email is "an information system for the purpose of receiving electronic communications" within the meaning of the Act.
- (e) You agree that evidence of the "dispatch" (within the meaning of the Act) by Us of an email is also prima facie evidence of the "receipt" of the email by You within the meaning of the Act. Unless the contrary is proven the time of receipt will be deemed to be twenty (20) seconds after the time of the "dispatch" of the email.

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