

Advanced Solutions Group Pty Ltd – Terms & Conditions of Trade

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1. Definitions

1.1 "Contractor" shall mean Advanced Solutions Group Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Advanced Solutions Group Pty Ltd.

1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Contractor to the Client.

1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.

1.1 "Equipment" shall mean Equipment supplied on hire by the Contractor to the Client and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Contractor to the Client (and where the context so permits shall include any supply of Services as hereinafter defined).

1.1 "Works" shall mean all Works (and where the context so permits includes the supply of Materials) undertaken by the Contractor and described in the quotation or Works agreement and includes any advice or recommendations.

1.4 "Materials" shall means any Materials required to complete the Works.

1.5 "Price" shall mean the price payable for the Works as agreed between the Contractor and the Client in accordance with clause 4 of this contract.

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

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

3. Acceptance

3.1 Any instructions received by the Contractor from the Client for the supply of Works and/or the Client's acceptance of Works supplied by the Contractor shall constitute acceptance of the terms and conditions contained herein.

3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.

3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Contractor.

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

3.5 Works are supplied by the Contractor only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. Price And Payment

4.1 At the Contractor's sole discretion the Price shall be either:

(a) as indicated on invoices provided by the Contractor to the Client in respect of Works supplied; or

(b) the Contractor's quoted Price (subject to clause 4.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.

4.2 The Contractor reserves the right to change the Price in the event of a variation to the Contractor's quotation. Any variation from the plan of scheduled Works or specifications (including, but not limited to, any variation as a result of additional Works required due to hidden or unidentifiable difficulties which were unknown until the Works commenced, or due to unforeseen circumstances such as, but not limited to, increases to the Contractor in the cost of materials and labour) the Contractor reserves the right to halt all Works until such time as the Contractor and the Client agree to changes to the plans/specifications as outlined in the quotation to incorporate such variances. The variances once approved shall be detailed in writing and charged for on the basis of the Contractor's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.

4.3 At the Contractor's sole discretion a deposit may be required.

4.4 At the Contractor's sole discretion:

(a) payment shall be due on delivery of the Works; or

(b) payment for approved Clients shall be made by instalments in accordance with the Contractor's payment schedule, as detailed below:

Stage Deposit/Payment Percentage

1st Progress Payment Deposit 10%

2nd Progress Payment 25% of ScopeWorks covered 22.5%

3rd Progress Payment 50% of ScopeWorks covered 22.5%

4th Progress Payment 75% of ScopeWorks covered 22.5%

Final Payment 22.5%

4.5 Time for payment for the Works shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.

4.6 The Contractor may submit a detailed payment claim at intervals as agreed between the Client and the Contractor for Works performed. The value of Works so performed shall include the reasonable value of authorised variations and the value of Materials delivered to the site but not yet installed.

4.7 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Contractor.

4.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

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5. Delivery

5.1 At the Contractor's sole discretion delivery shall take place when the Works are undertaken at, or Materials delivered to, the Client's nominated address.

5.2 At the Contractor's sole discretion the costs of delivery of Materials are:

- (a) included in the Price; or
- (b) in addition to the Price; or
- (c) for the Client's account.

5.3 The Client shall make all arrangements necessary to take delivery of the Works whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Works as arranged then the Contractor shall be entitled to charge a reasonable fee for redelivery.

5.4 Delivery of the Works to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.

5.5 The Contractor may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

5.6 The failure of the Contractor to deliver shall not entitle either party to treat this contract as repudiated.

5.7 The Contractor shall not be liable for any loss or damage whatsoever due to failure by the Contractor to deliver the Works (or any of them) promptly or at all, where due to circumstances beyond the control of the Contractor.

6. Risk

6.1 If the Contractor retains ownership of the Works nonetheless, all risk for the Works passes to the Client on delivery.

6.2 If any of the Works are damaged or destroyed following delivery but prior to ownership passing to the Client, the Contractor is entitled to receive all insurance proceeds payable for the Works. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.

6.3 Where the Client expressly requests the Contractor to leave Materials outside the Contractor's premises for collection or to deliver Materials to an unattended location then such Materials shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all.

7. Access

7.1 The Client shall ensure that the Contractor has clear and free access to the work site at all times to enable them to undertake the Works. The Contractor shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Contractor.

8. Underground Locations

8.1 Prior to the Contractor commencing any Works the Client must advise the Contractor of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

8.2 Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor 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 8.1.

10. Defects

10.1 The Client shall inspect the Works on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Contractor an opportunity to inspect the Works within a reasonable time following delivery if the Client believes the Works are defective in any way. If the Client shall fail to comply with these provisions the Works shall be presumed to be free from any defect or damage. For defective Works, which the Contractor has agreed in writing that the Client is entitled to reject, the Contractor's liability is limited to either (at the Contractor's discretion) replacing the Works or repairing the Works except where the Client

has acquired Works as a consumer within the meaning of the Trade Practices Act 1974 (CWlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Works, or repair of the Works, or replacement of the Works.

11. Returns

11.1 Returns will only be accepted provided that:

- (a) the Client has complied with the provisions of clause 10.1; and
- (b) the Contractor has agreed in writing to accept the return of the Works; and
- (c) the Works are returned at the Client's cost within seven (7) days of the delivery date; and
- (d) the Contractor will not be liable for Works which have not been stored or used in a proper manner; and
- (e) the Works are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

11.2 Non-stocklist items or Works made to the Client's specifications are under no circumstances acceptable for credit or return

12. Warranty

12.1 Subject to the conditions of warranty set out in clause 12.2 the Contractor warrants that if any defect in any workmanship of the Contractor becomes apparent and is reported to the Contractor within six (6) months of the date of delivery (time being of the essence) then the Contractor will either (at the Contractor's sole discretion) replace or remedy the workmanship.

12.2 The conditions applicable to the warranty given by clause 12.1 are:

- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Client to properly maintain any Works; or

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(ii) failure on the part of the Client to follow any instructions or guidelines provided by the Contractor; or
(iii) any use of any Works otherwise than for any application specified on a quote or order form; or
(iv) the continued use of any Works after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
(v) fair wear and tear, any accident or act of God.

(b) the warranty shall cease and the Contractor shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Contractor's consent.

(c) in respect of all claims the Contractor shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

12.3 For Materials not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Materials. The Contractor shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Materials.

12.4 Any applicable warranty given on Materials supplied by the Contractor to the Client shall be contained in the warranty documentation supplied with the Materials, shall be available on request by the Client to the Contractor at the time of completion of the Works.

12.5 To the extent permitted by statute, no warranty is given by the Contractor for any cleaning Services provided and any implied warranty, is expressly excluded. The Contractor shall not be responsible for any loss or damage to the Works, or caused by the Works, or any part thereof however arising.

13. Intellectual Property

13.1 Where the Contractor has written, drawn or designed Works for the Client, then the copyright in those designs and drawings and documents shall remain vested in the Contractor, and shall only be used by the Client at the Contractor's discretion.

13.2 The Client warrants that all designs or instructions to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.

13.3 The Client hereby authorises the Contractor to utilise images of the Works designed or drawn by the Contractor in advertising, marketing, or competition material by the Contractor.

14. Default & Consequences of Default

14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

14.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Contractor.

14.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in pursuing the debt including legal costs on a solicitor and own client basis and the Contractor's collection agency costs.

14.4 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Contractor may suspend or terminate the supply of Works to the Client and any of its other obligations under the terms and conditions. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.

14.5 If any account remains overdue after sixty (60) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of five hundred dollars (\$500.00)) shall be levied for administration fees which sum shall become immediately due and payable.

14.6 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable in the event that:

(a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to meet its payments as they fall due; or

(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

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15. Security And Charge

15.1 Despite anything to the contrary contained herein or any other rights which the Contractor may have howsoever:

(a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Contractor or the Contractor's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Contractor (or the Contractor's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.

(b) should the Contractor elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis.

(c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Contractor or the Contractor's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 15.1.

16. Dispute Resolution

16.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

(a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and

(b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

17. Compliance with Laws

17.1 The Client and the Contractor 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.

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

17.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

18. Cancellation

18.1 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Materials at any time before the Works are undertaken by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Price. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.

18.2 In the event that the Client cancels delivery of Works the Client shall be liable for any loss incurred by the Contractor (including, but not limited to, any loss of profits) up to the time of cancellation.

18.3 Cancellation of orders for Materials made to the Client's specifications or non-stocklist items will definitely not be accepted, once production has commenced.

19. Privacy Act 1988

19.1 The Client and/or the Guarantor/s agree for the Contractor to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Contractor.

19.2 The Client and/or the Guarantor/s agree that the Contractor may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

(a) to assess an application by Client; and/or

(b) to notify other credit providers of a default by the Client; and/or

(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or

(d) to assess the credit worthiness of Client and/or Guarantor/s.

19.3 The Client consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

19.4 The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes and for other purposes as shall be agreed between the Client and Contractor or required by law from time to time:

(a) provision of Works; and/or

(b) marketing of Works by the Contractor, its agents or distributors in relation to the Works; and/or

(c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Works; and/or

(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or

(e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Works.

19.5 The Contractor may give information about the Client to a credit reporting agency for the following purposes:

(a) to obtain a consumer credit report about the Client; and/or

(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

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20. Unpaid Contractor's Rights

20.1 Where the Client has left any item with the Contractor for repair, modification, exchange or for the Contractor to perform any other Service in relation to the item and the Contractor has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Contractor shall have:

- (a) a lien on the item;
- (b) the right to retain the item for the Price while the Contractor is in possession of the item;
- (c) a right to sell the item.

20.2 The lien of the Contractor shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.

21. Equipment Hire

21.1 The Equipment shall at all times remain the property of the Contractor and is returnable on demand by the Contractor. In the event that the Equipment is not returned to the Contractor in the condition in which it was delivered the Contractor retains the right to charge the Price of repair or replacement of the Equipment.

21.2 The Client shall;

- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.
- (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
- (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Contractor to the Client.

21.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, the Contractor's interest in the Equipment and agrees to indemnify the Contractor against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

22. Building and Construction Industry Security of Payments Act 1999

22.1 At the Contractor'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 Payments Act 1999 may apply.

22.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

23. General

23.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.

23.3 The Contractor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Contractor of these terms and conditions.

23.4 In the event of any breach of this contract by the Contractor the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Works.

23.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.

23.6 The Contractor may license or sub-contract all or any part of its rights and obligations without the Client's consent.

23.7 The Client agrees that the Contractor may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Client of such change.

23.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

23.9 The failure by the Contractor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Contractor's right to subsequently enforce that provision.