

TRADING TERMS AND CONDITIONS

1. INTERPRETATION APPLICATION AND PRECEDENCE OF DOCUMENTS:

- 1.1 These terms and conditions shall apply, and shall take precedence over any attachments referred to in the “**Scope of Works**” as defined in Clause 2.1.
- 1.2 These terms and conditions are to be read subject to any overriding statutory provisions whether State or Federal and any regulations thereunder relating to domestic building work.

2. DEFINITIONS:

- 2.1 In these terms and conditions the following shall have the meanings set out beside them:-

“**Authority to Proceed/Access Property**” means the authority to proceed executed by the Owner in respect of the Contract.

“**Contractor**” means the Johns Lyng Group company identified in the **Authority to Proceed/Access Property** together with any subsidiary of Johns Lyng Group Pty Ltd ACN 005 852 317 within the meaning of the Section 46 of the *Corporations Act 2001*.

“**Building Permit**” means the Building Permit if any issued in respect of the **Works**.

“**Contract**” means this Contract.

“**Date of Acceptance**” means the date the Owner signs the **Authority to Proceed**.

“**Fair and Reasonable Price**” means the price set out in the **Authority to Proceed/Access Property**.

“**Insurer**” means the **Owner’s** insurance company.

“**Owner**” means the party or parties who have a legal or equitable interest in property on which the **Works** are being carried out or in respect of goods and chattels the party or parties who own those goods or chattels.

“**Payments Schedule**” means the schedule referred to in Clause 14.

“**Scope of Works**” means the scope of works set out in the **Authority to Proceed/Access Property**.

“**Site**” means the address of the **Owner’s** property or the address to which the Contractor has taken the **Owner’s** goods or chattels.

“**Statement of Satisfaction**” means the Statement of Satisfaction referred to in Clause 20.

“**Terms and Conditions**” mean these Trading Terms and Conditions.

“**Works**” means the works referred to in the **Scope of Works**.

3. ACCEPTANCE:

3.1 The **Owner's** acceptance of these Terms and Conditions and the entering into of the Contract shall be deemed to occur upon the **Owner** signing the **Authority to Proceed/Access Property**. After the expiration of 30 days from the **Contractor's** submission it shall be in the Contractor's absolute discretion as to whether it wishes to proceed with the works in accordance with the **Authority to Proceed/Access Property**.

3.2 The Owner confirms and acknowledges that he has read and understood the definition of the term "Contractor" and confirms that he shall be liable to pay the accounts of the Contractor as defined in these terms and conditions.

4. CANCELLATION OR SUSPENSION:

In the event the Contractor is prevented from completing the contract through any cause whatsoever beyond its reasonable control, the Owner shall be liable to pay for all work performed, materials supplied or provided and expenses incurred by the Contractor up to the date of cancellation or suspension of the contract.

5. COMMENCEMENT AND COMPLETION:

The Works shall be commenced and completed by the Contractor within a reasonable time from the Date of Acceptance having regard to the nature of the works to be performed and any delays which may be caused by any or all of the following:

- (a) Regulatory compliance with relevant authorities;
- (b) Variations;
- (c) Strikes or lockouts by employees or subcontractors;
- (d) Accidents;
- (e) Inclement weather;
- (f) Force Majeure/Act of God;
- (g) The existence of Hazardous Materials on the Site;
- (h) Any other such occurrence which is beyond the Contractor's reasonable control.

6. ERRORS:

The Contractor has the right at any time in its absolute discretion to correct errors in calculations or other apparent errors in the price or costing of the Works at any time. Other than as provided in this condition, the price or costing of the Works and these terms and conditions and any documents referred to in "Scope of Works" are to be strictly complied with.

7. WORKS:

Any and all claims relating to defective materials or poor workmanship must be made in writing to the Contractor setting out the nature, extent and particulars of the alleged defects or poor workmanship within 30 days of the Completion Date of the works.

8. VARIATIONS:

- 8.1** The Contractor shall be entitled to charge and be paid for additional work other than that specified in the Description of Works performed and completed at the request of the Owner and for the Owner's benefit on the basis of an agreed written variation to these terms and conditions or in the absence of a written variation on a cost plus basis calculated on the basis of 10% for overheads and preliminaries plus a further 10% reflecting the Contractor's reasonable profit margin.
- 8.2** The Owner confirms and acknowledges that it shall be a variation to the contract if the Contractor is required to remove any rock or additional bulk concrete from the site and such variation shall be charged in accordance with the provisions of Clause 8.1.

9. OWNERS INSURANCE POLICY:

- 9.1** The Owner represents and warrants to the Contractor that he has read and understood his policy of insurance insofar as its applicability to the Works and the insurance coverage that the policy provides in relation to the Works.
- 9.2** The Owner confirms and acknowledges that he shall be liable to the Contractor for the cost of all or part of the Works notwithstanding that all or part of the Works fall outside the Owner's insurance policy coverage or if they exceed the sum insured under the Owner's insurance policy.

10. CONTRACTOR'S INSURANCE:

- 10.1** The Contractor will keep in force a Standard Third Party Public Liability Insurance Policy in respect of itself, its servants, agents or employees, however it shall not be under any liability whatsoever to the Owner for any loss or damage beyond the limits of liability covered by the said policy and in any event over a limit of \$10,000,000.00.
- 10.2** The Contractor undertakes the work, it will only be responsible to insure the premises under a Construction Risks Insurance Policy, to the value of and to the extent of such work as contracted and shall have no other liability of whatsoever nature howsoever arising.

11. LIABILITY FOR HIRED EQUIPMENT:

The Contractor shall not be responsible for any care of or payment for hired equipment including shutters and storm covers erected or fixed on the property by third parties at the request of the Owner or the Owners Insurer and the Owner confirms and acknowledges that he will be liable to accept and pay all charges and costs in relation to the hire of such equipment together with all charges and costs in respect of the repair or replacement of any such hired equipment which is damaged or stolen.

12. AUTHORISATION FOR PAYMENT:

Notwithstanding the Owner's primary liability to make payment to the Contractor pursuant to these terms and conditions the Owner hereby irrevocably authorises his insurer to make payment for the Works directly to the Contractor forthwith upon submission by the Contractor of an invoice to insurer or to the Owner.

13. STATUTORY WARRANTIES:

Johns Lyng Group warrants that:

- 13.1** The Works will be carried out in a proper and workmanlike manner and in accordance with the Scope of Works;
- 13.2** All materials to be supplied by the Contractor for use in the Works will be good and suitable for the purpose for which they are used and that, unless otherwise stated in this contract the materials will be new;
- 13.3** The Works will be carried out in accordance with and will comply with all relevant State and Federal Acts of Parliament and regulations made there under;
- 13.4** The Works will be carried out with reasonable care and skill and will be completed by the date (or within the period) specified by the Contract or such reasonable time thereafter;
- 13.5** If the Works consist of the erection or construction of a home, or is work intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, the home will be suitable for occupation at the time the work reaches practical completion;
- 13.6** If the contract states the particular purpose for which the Works are required, or the result which the building Owner wishes the work to achieve, so as to show that the building Owner relies on the Contractor's skill and judgment, the Contractor warrants that the Works and any material used in carrying out the work will be reasonably fit for that purpose or will be of such a nature and quality that they might reasonably be expected to achieve that result;
- 13.7** Any provisional sum included by the Contractor in this contract has been calculated with reasonable care and skill taking account of all the information reasonably available at the date this contract is made, including the nature and location of the building site however the Owner agrees to pay any increase in the cost of any provisional sum.

14. PROGRESS & FINAL PAYMENTS:

14.1 Payment:

- 14.1.1** In the event that the method of payment to the Contractor by the Owner is on a cost plus basis, the method of calculation of the total Price payable to the Contractor and any progress claim shall be in accordance with the Payments Schedule;
- 14.1.2** The Contractor shall be entitled from time to time to deliver a progress claim in writing and calculated in accordance with the Payments Schedule of these terms and conditions setting out the amount due (including the cost of any materials and labour, and commissions and any fees) for all of that part of the Works completed by the Contractor in accordance with this contract up to the date of the delivery of the claim.

14.2 Claims by the Contractor for payments shall be as set out in these terms and conditions:

14.2.1 Any progress payment delivered by the Contractor shall be payable within 7 days from the date of submission to the Owners or their Insurer;

14.2.2 Should the *Owner* or its *Insurer* fail to pay the Contractor within 30 days of the date of any progress and final claim then the *Owner* shall be liable to the Contractor and shall indemnify the Contractor for;

14.2.2.1 The total amount claimed by the Contractor in its progress claim and/or final claim (as the case may be);

14.2.2.2 Interest accrued on the amount claimed by the Contractor calculated at the Reserve Bank Bill Rate from the due date of payment until the date of payment; and

14.2.2.3 All of the Contractor's legal costs (calculated on an indemnity basis) incurred as a result of or in connection with the *Owner's* failure to comply with this clause 14.2.2

14.2.3 In addition and at the sole discretion of the Contractor, the Contractor may:

14.2.3.1 Suspend all the Works the subject of the contract until such time when all outstanding monies are paid or the Contractor *has* received a Bank Guarantee in favour of Johns Lyng Group Pty Ltd for the remaining value of the Contract;

14.2.3.2 Disclose the reason for the Contractor's action to insurers of their representative.

14.2.3.3 Remove from site such goods or materials not yet incorporated into the project and not paid for by the Owner. The property and any such goods or materials shall not pass from the Contractor to the Owner until time as payment in full for them has been received by the Contractor.

15. CONSEQUENTIAL LOSS:

The Contractor shall not accept nor be liable for any claim for consequential loss or damage or for latent defects of whatsoever nature relating to any existing building or land on or adjacent to the Site and associated with the Works.

16. PRICE FLUCTUATION:

The price of the Works is a strictly nett amount and will be subject to rise and fall from the date of the quotation to the completion of the Works in accordance with the Contract with reference to the agreement current between the Royal Australian Institute and Architects and the Master Builders Association.

17. EXCLUDED ITEMS:

- 17.1** No allowance is made in the quotation for the preparation of plans, specifications, engineering details or computations unless specified in the quotation.
- 17.2** The Owner shall be liable to pay to the Contractor any additional costs incurred by the Contractor to complete the Works as a result of any of the following:-
- 17.2.1** any statutory provisions being amended between the date of the quotation and Completion of the Works.
- 17.2.2** any direction by any Government Department or Statutory or other Authority having jurisdiction over the site to complete the Works to a specific standard not required and not forming part of the quotation.
- 17.2.3** any requirement to undertake the Works to a specified standard pursuant to a code or regulation which was not in existence at the time of the original structure or building was constructed and which results in a requirement to upgrade the structure or building.
- 17.2.4** any statutory provision or directions not current at the time of quotation which refer to the use of the land which had not been disclosed to the Contractor by the Owner.

18. CHARGE:

DELIBERATELY OMITTED

19. CONTENTS AND DEBRIS REMOVAL:

- 19.1** The Owner authorises the Contractor to remove all contents remaining at the Site to be removed and disposed of at the absolute discretion of the Contractor and the Contractor shall not be held liable by the Owner for the disposal of any contents that remain on the Site.
- 19.2** If applicable all items removed from the Site by the Contractor and taken away for assessment and possible restoration will be assessed and dealt with at the Owner's cost. If in the reasonable opinion of the Contractor the items do not respond to the cleaning processes and techniques applied by the Contractor the Contractor will nonetheless still be entitled to be paid for the full extent of the costs incurred by the Contractor in attempting to clean such items including such circumstances where such costs are not covered or paid for by the Owner's insurer.
- 19.3** The Owner shall be responsible for the cost of storing any goods removed from the site by the Contractor and which have been in storage for in excess of thirty (30) days. If the Owner does not pay the Contractor's invoice in respect of such storage costs within twenty-one (21) days of the date of the issuing of such invoice by the Contractor then the Contractor has the right to dispose of such goods as the Contractor sees fit.
- 19.4** At all times the Contractor will take all proper care and skill to remove and relocate goods from time to time but does not accept any responsibility for loss or damage to those items during that period.

19.5 If the Owner requires any items to be retained, protected or reused as part of the Works then it is the obligation of the Owner to advise the Contractor in writing of these requirements prior to the signing of the contract. Once the contract is signed the Contractor cannot be held liable in any way for any damage to or disposal of any such items.

20. SATISFACTION COMPLETION CERTIFICATE AND DEFECTS LIABILITY PERIOD:

20.1 Once the Works reach practical completion it is deemed to be completed and a Statement of Satisfaction ("SOS") must be signed by the Owner which SOS shall include a list of any defects which are still outstanding as at the date of the execution of the SOS.

20.2 Upon the execution of the SOS the Contractor shall issue a final invoice.

20.3 In the event that the Owner refuses to sign the SOS and payment of the Contractor's final invoice is not received within thirty (30) days of the Works being practically completed then interest at the rate prescribed in Clause 14.2.2 shall apply to all monies outstanding pursuant to the Contractor's final invoice.

20.4 The Contractor's Defect Liability Period is a period of ninety (90) days from the execution of the SOS or practical completion whichever is the earlier.

21. INDUSTRIAL ISSUES:

The Owner shall be liable for any additional costs of whatsoever nature suffered or incurred by the Contractor as a result of any workplace issues which are outside the Contractor's obligation or control and such delays and additional costs shall be deemed to be variations and shall be charged in accordance with Clause 8 of the contract.

22. TERMINATION:

If any party commits any breach of this Agreement then any other party may subject to the provisions of this Agreement and without prejudice to any other rights at any time during the continuance of the breach terminate this Agreement and sue the party in breach for damages for breach of the Contract and all expenses incurred by the party suffering the effects of the breach.

23. CONSEQUENCES OF DEFAULT:

If any party to this Agreement commits a breach of this Agreement the party in default shall without prejudice pay on demand:-

- A All reasonable expenses incurred by the other party as a result of this breach; and
- B Interest on any money overdue during the period of default at the rate set out in Clause 14.2.2.

24. TIME:

Time shall be of the essence of this Agreement.

25. NOTICES:**25.1 Form**

A notice, approval, consent or other communication in connection with this Agreement:-

- (a) may be given by an Authorised Officer of the relevant party;
- (b) must be in writing; and
- (c) must be left at the address of the addressee, or sent by prepaid ordinary post to the address of the addressee specified in this Agreement.

25.2 When Effective

Unless a later time is specified in it a notice, approval, consent or other communication takes effect from the time it is received.

25.3 A letter or facsimile is taken to be received:-

in the case of a posted letter, on the third day after posting or in the case of international post the seventh day; and

26. ENTIRE AGREEMENT:

26.1 This Agreement contains the entire understanding and agreement between the parties as to the subject matter of this Agreement.

26.2 All previous negotiations, understandings, representations, warranties (other than warranties set out in this Agreement), memoranda or commitments in relation to, or in any way affecting the subject matter of this Agreement are merged in and superseded by this Agreement and shall be of no force or effect whatever and no party shall be liable to any other party in respect of those matters.

26.3 No oral explanation or information provided by any party to another shall affect the meaning or interpretation of this Agreement or constitute any collateral agreement, warranty or understanding between any of the parties.

27. EXECUTION OF COUNTERPARTS:

27.1 This Agreement may consist of one or more counterpart copies.

27.2 All counterparts of this Agreement, when taken together, shall constitute the one document.

28. WAIVER:

The failure or omission of a party at any time to:-

- (a) enforce or require the strict observance of or compliance with any provision of this Agreement; or
- (b) exercise any election or discretion under this Agreement;

shall not operate as a waiver of them or of the rights of a party, whether express or implied, arising under this Agreement.

29. GOVERNING LAW:**29.1 Governing Law**

Unless this Agreement relates to domestic building works in a State other than the State of Victoria then this Agreement is governed by the law in force in the State of Victoria

29.2 Jurisdiction

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of the State of Victoria and the Federal Court of Australia and any Courts of Appeal from them. Each party waives any right it has to object to action being brought in those Courts, to claim that the action has been brought in an inconvenient forum, or to claim that those Courts do not have jurisdiction.

30. ASSIGNMENT:**30.1 DELIBERATELY OMITTED****31. GST:****31.1 GST Definitions**

For the purpose of this Clause 31:

“GST” means GST within the meaning of the GST Act.

“GST Act” means the A New Tax System (Goods and Services Tax) Act 1999 (as amended).

Expressions set out in italics in the clause bear the same meaning as those expressions in the GST Act.

31.2 Payments do not include GST

The payments under this Agreement do not include GST.

31.3 GST Gross Up

If a supply under this Agreement is subject to GST, the recipient of the supply agrees, subject to it receiving a Tax Invoice, to pay the supplier an additional amount equal to the Amount of the Consideration multiplied by the prevailing GST rate.

The additional amount is payable at the same time and in the same manner as the consideration for the supply to which the additional amount relates.

If the additional amount is different to the GST payable by the supplier on the supply, the additional amount must be adjusted.

31.4 Exclusion of Input Tax Credits

If a payment under this Agreement is a reimbursement or made under an indemnity; then

31.4.1 the amount payable is reduced by the amount of any Input Tax Credit the payee has claimed or is entitled to claim for the cost, expense or loss being reimbursed or indemnified; and

31.4.2 the first paragraph of Clause 31.3 applies to the payment if it is consideration for a taxable supply made by the payee to the payer.

31.5 In the event that the Works relate to an insurance claim and the Owners insurer will not pay any GST amount in respect of the claim then the Contractor will forward to the Owner a copy of its Tax Invoice and the GST amount set out in that Tax Invoice is to be paid by the Owner to the Contractor within 7 or 21 days as the case may be.

32. REMEDIES CUMULATIVE:

The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Agreement.

33. CONFIDENTIALITY:

The parties agree that all information provided by the parties to each other under this Agreement is confidential to the other party, its employees, legal advisors, auditors and other consultants and may not be disclosed to any person except:-

- (a) with the consent of the other party (which consent is not to be unreasonably withheld);
- (b) if allowed or required by law or this Agreement, or required by any Stock Exchange, or required to be disclosed to the Australian Taxation Office in connection with their tax affairs;
- (c) in connection with legal proceedings relating to this Agreement;
- (d) if the information is generally and publicly available;
- (e) to a related entity of the party provided the related entity undertakes to observe this clause; or

- (f) to any other third party properly and necessarily involved in the parties performance of the Contract.

34. DISPUTE RESOLUTION:

- 34.1** Subject to Clause 34.8, if there is any dispute between the parties concerning this Agreement, then the parties must attempt to resolve any such dispute by the dispute resolution procedure set out herein before resorting alternative avenues, including litigation provided that nothing herein shall preclude a party from seeking urgent interlocutory relief from a court.
- 34.2** The dispute resolution procedure is as follows:
- 34.2.1** if a party believes that a dispute has arisen, it must serve a dispute notice ("the dispute notice") on the other party;
 - 34.2.2** the dispute notice must state that a dispute has arisen and identify in sufficient detail what the dispute is;
 - 34.2.3** within three (3) days of service of the dispute notice, a representative of each party ("the representatives") must meet and seek to resolve the dispute;
 - 34.2.4** failing resolution by the representatives the parties may jointly request the appointment of a mediator and failing agreement within seven (7) days of service of the dispute notice, either party may apply to the President of the Law Institute of Victoria to appoint a mediator;
 - 34.2.5** once the mediator has accepted the appointment, the parties must comply with the mediator's instructions; and
 - 34.2.6** if the dispute is not resolved within thirty (30) days of the appointment of the mediator, or any other period agreed by the parties in writing, the mediation ceases.
- 34.3** The mediator may fix the charges for the mediation which must be paid equally by the parties.
- 34.4** If the dispute is settled, all parties must sign the terms of agreement and those terms are binding on the parties.
- 34.5** The mediation is confidential and statements made by the mediator or the parties as well as discussions between the participants to the mediation before, after or during the mediation cannot be used in any legal proceedings.
- 34.6** It shall be a term of the engagement of the mediator that the parties release the mediator from any court proceedings relating to the dispute or the mediation.
- 34.7** The mediator is not bound by the rules of natural justice and may discuss the dispute with a party in the absence of any other party.

34.8 Notwithstanding the foregoing provisions of this Clause 34, where the dispute relates to the computation of the purchase price under this Agreement, either party may refer the dispute to a chartered accountant appointed by the President for the time being of the Institute of Chartered Accountants, Victorian Division, who shall act as an expert and not as an arbitrator and whose decision shall be final and binding on all parties. The vendor and the purchaser shall bear the accountant's costs in equal proportions.