

1. Definitions

- 1.1 “BPS” means Baldocks Plumbing Services Pty Ltd T/A Baldocks Plumbing Services, its successors and assigns or any person acting on behalf of and with the authority of Baldocks Plumbing Services Pty Ltd T/A Baldocks Plumbing Services.
- 1.2 “Client” means the person/s or any person acting on behalf of and with the authority of the Client requesting BPS to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a part of a trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 “Works” means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by BPS to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable (plus any GST where applicable) for the Works as agreed between BPS and the Client in accordance with clause 5 below.
- 1.5 “GST” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and BPS.
- 2.3 Works are supplied by BPS 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.
- 2.4 These terms and conditions may be meant to be read in conjunction with BPS’ Hire Form, and:
 - (a) where the context so permits, the terms ‘Works’ or ‘Materials’ shall include any supply of Equipment, as defined therein; and
 - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
- 2.5 Where applicable, BPS’ Appendix A – Solar Terms and Conditions shall be read in conjunction with these terms and conditions of trade.
- 2.6 In the event that the Materials and/or Works provided by BPS are the subject of an insurance claim that the Client has made, then the Client shall be responsible for the payment of any monies payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by BPS and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.
- 2.7 Where the plumbing or drainage Works specifically referred to in a quotation or on an invoice includes stormwater or sewer drainage cleaning by devices such as an electric eel, the Client:
 - (a) acknowledges that they have been informed that the use of the device may damage or destroy the drainage pipes;
 - (b) agrees that where such damage or destruction of the pipes occurs then any repairs or rectification shall be at the Client’s cost and as such shall indemnify BPS against all costs; and
 - (c) if during the course of drain clearing works, that BPS’ equipment is caught, jammed, or broken off in the drain that any costs incurred by BPS for the recovery of the equipment shall be the Client’s responsibility.
- 2.8 In the event that BPS is required to provide the Works urgently, that may require BPS’ staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then BPS reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between BPS and the Client.
- 2.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that BPS shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - (a) resulting from an inadvertent mistake made by BPS in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by BPS in respect of the Works.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of BPS; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

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

5. Price and Payment

- 5.1 At BPS’ sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by BPS to the Client in respect of Works performed or Materials supplied; or
 - (b) the Price as at the date of delivery of the Works according to BPS’ current price list; or
 - (c) BPS’ quoted Price (subject to clause 5.2) which shall be binding upon BPS provided that the Client shall accept BPS’ quotation in writing within thirty (30) days. A minimum invoice amount may apply.
- 5.2 BPS reserves the right to change the Price:
 - (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, hard rock or other obscured barriers below the surface, latent soil conditions, dewatering, iron reinforcing rods in concrete, poor weather conditions, limitations to accessing the site, unknown wall cavities, availability of machinery, safety considerations including the discovery of

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- asbestos, prerequisite work by a third party not being completed, change of design, or hidden pipes and wiring underground or in walls, etc.) which are only discovered on commencement of the Works; or
- (d) in the event of increases to BPS in the cost of labour or materials which are beyond BPS' control.
- 5.3 Variations will be charged for on the basis of BPS' quotation, and will be detailed in writing, and shown as variations on BPS' invoice. The Client shall be required to respond to any variation submitted by BPS within ten (10) working days. Failure to do so will entitle BPS to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At BPS' sole discretion a non-refundable deposit may be required.
- 5.5 The Client acknowledges that the supply of Works on credit shall not take effect until the Client has completed a credit application with BPS and it has been approved with a credit limit established for the account. In the event that the supply of Works request exceeds the Client's credit limit and/or the account exceeds the payment terms, BPS reserves the right to refuse delivery and/or request an alternative payment method.
- 5.6 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by BPS, which may be:
- (a) on completion of the Works; or
- (b) for approved account holders, thirty (30) days following the date of any invoice given to the Client;
- (c) the date specified on any invoice or other form as being the date for payment; or
- (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by BPS.
- 5.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card which excludes Amex and Diners (a surcharge may apply per transaction), or by any other method as agreed to between the Client and BPS.
- 5.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by BPS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to BPS an amount equal to any GST BPS must pay for any supply by BPS under this or any other contract for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. Provision of the Works**
- 6.1 Subject to clause 6.2 it is BPS' responsibility to ensure that the Works start as soon as it is reasonably possible.
- 6.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that BPS claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond BPS' control, including but not limited to any failure by the Client to:
- (a) make a selection; or
- (b) have the site ready for the Works; or
- (c) notify BPS that the site is ready.
- 6.3 At BPS' sole discretion, the cost of delivery is in addition to the Price.
- 6.4 BPS 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.
- 6.5 Any time specified by BPS for delivery of the Works is an estimate only and BPS will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that BPS is unable to supply the Works as agreed solely due to any action or inaction of the Client, then BPS shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
- 7. Risk**
- 7.1 If BPS retains ownership of the Materials under clause 9 then:
- (a) where BPS is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either;
- (i) the Client or the Client's nominated carrier takes possession of the Materials at BPS' address; or
- (ii) the Materials are delivered by BPS or BPS' nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- (b) where BPS is to both supply and install Materials then BPS shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 7.2 Notwithstanding the provisions of clause 7.1 if the Client specifically requests BPS to leave Materials outside BPS' premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 7.3 The Client acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where BPS is requested to merely clear such blockages, BPS can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, BPS will immediately advise the Client of the same and shall provide the Client with an estimate for the full repair of the damaged pipe work.
- 7.4 The Client acknowledges that BPS is only responsible for parts that are replaced by BPS and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to indemnify BPS against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.
- 7.5 Where the Client has supplied goods for BPS to complete the Works, the Client acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the goods. BPS shall not be responsible for any defects in the goods, any loss or damage to the Works (or any part thereof), howsoever arising from the use of goods supplied by the Client.

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- 7.6 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any plumbing connections (including, but not limited to, meter boxes, pipes, couplings and valves) are of suitable capacity to handle the Materials once installed.
- 7.7 The Client acknowledges that Materials supplied may:
- (a) fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching; and
 - (e) create undesirable smells caused by a system as a result of its normal operation.
- 7.8 The Client acknowledges that BPS' quotation for repairs to existing tile roofs shall be based only on the replacement of damaged tiles and shall not include the replacement of tiles with slight imperfections unless authorised by the Client prior to the commencement of the Works. If the Client requests the replacement of tiles that have slight imperfections but which BPS does not deem to be defective or that will affect the integrity of the roof, then this shall be a variation to the original quotation and clause 5.2 will apply.
- 7.9 The Client acknowledges and agrees that no persons other than those authorised or employed by BPS are to walk on the treated roof surface for a period of twenty-one (21) days after completion of the job and at no time are any persons permitted to be in the areas of the Works. BPS shall not be liable for any loss, damages, injuries, or costs however arising resulting from the Client's failure to comply with this clause.
- 7.10 The Client accepts and acknowledges that BPS accepts no liability for any subsequent loss or damage (including, but not limited to, internal water damage) to the Client's property which may occur during the cleaning process where such loss or damage is due to pre-existing faults or leaks.
- 7.11 The Client accepts that fire hose and reels installed to / at their premises should not be seen as a life saving device. It shall be the Client's responsibility:
- (a) to ensure the equipment is tested and maintained to full operational condition; and
 - (b) to ensure the areas are free from obstacles which may impair access to the system.

8. Client's Acknowledgements and Responsibilities

- 8.1 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in BPS' or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by BPS.
- 8.2 If BPS notifies the Client that it intends to store onsite Materials, plant, equipment or tools to be used in performance of the Works, then the Client shall designate an area for storage and shall take all reasonable precautions to protect such items against destruction, damage, or theft. In the event that such items are destroyed, damaged or stolen then the cost of replacement shall be added to the contract Price and will be shown as a variation as per clause 5.2.
- 8.3 The Client shall be responsible for ensuring that the Materials ordered are suitable for their intended use.
- 8.4 The Client agrees to:
- (a) remove any furniture, furnishings or personal goods from the vicinity of the Works and agrees that BPS shall not be liable for any damage caused to those items through the Client's failure to comply with this clause.
 - (b) allocate an area (per level) for the accumulation and removal of any rubbish created from the provision of the Works by BPS.
- 8.5 Where fencing is installed on a retaining wall BPS shall not be liable for any movement in the fence due to consolidation, or the movement of soil or any other component of the retaining wall.
- 8.6 BPS shall not be responsible for digging land out under fence lines nor removal of soil from the worksite.

9. Access

- 9.1 The Client shall ensure that BPS has clear and free access to the worksite at all times to enable them to undertake the Works. BPS 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 BPS.
- 9.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, unloading, lifting, earth moving or other equipment as may be deemed necessary by BPS.

10. Underground and Hidden Locations

- 10.1 Prior to BPS commencing any work the Client must advise BPS of the precise location of all underground and hidden services on the site and clearly mark the same. The underground and hidden mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 10.2 Whilst BPS will take all care to avoid damage to any underground or hidden services the Client agrees to indemnify BPS in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.

11. Compliance with Laws

- 11.1 The Client and BPS 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.
- 11.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 11.3 The Client agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

12. Surplus Materials

- 12.1 Unless otherwise stated elsewhere in this contract:
- (a) demolished Materials remain the Client's property; and
 - (b) Materials which BPS brings to the site which are surplus remain the property of BPS.

13. Insurance

13.1 BPS shall have public liability insurance of at least five million dollars (\$5m). It is the Client's responsibility to ensure that they are similarly insured.

14. Title

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

- (a) the Client has paid BPS all amounts owing to BPS; and
- (b) the Client has met all of its other obligations to BPS.

14.2 Receipt by BPS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

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

15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

15.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials and/or collateral (account) – being a monetary obligation of the Client to BPS for Works – that have previously been supplied and that will be supplied in the future by BPS to the Client.

15.3 The Client undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which BPS may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 15.3(a)(i) or 15.3(a)(ii);
- (b) indemnify, and upon demand reimburse, BPS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of BPS;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of BPS;
- (e) immediately advise BPS of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.

15.4 BPS and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

15.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

15.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

15.7 Unless otherwise agreed to in writing by BPS, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.

15.8 The Client shall unconditionally ratify any actions taken by BPS under clauses 15.3 to 15.5.

15.9 Subject to any express provisions to the contrary (including those contained in this clause 15) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

16. Security and Charge

16.1 In consideration of BPS agreeing to supply the Materials, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

16.2 The Client indemnifies BPS from and against all BPS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising BPS' rights under this clause.

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

17.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within five (5) days of delivery notify BPS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow BPS to inspect the Materials or to review the Works provided.

17.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).

17.3 BPS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

17.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, BPS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. BPS' liability in respect of these warranties is limited to the fullest extent permitted by law.

17.5 If the Client is a consumer within the meaning of the CCA, BPS' liability is limited to the extent permitted by section 64A of Schedule 2.

17.6 If BPS is required to replace any Materials under this clause or the CCA, but is unable to do so, BPS may refund any money the Client has paid for the Materials.

17.7 If BPS is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then BPS may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.

17.8 If the Client is not a consumer within the meaning of the CCA, BPS' liability for any defect or damage in the Materials is:

- (a) limited to the value of any express warranty or warranty card provided to the Client by BPS at BPS' sole discretion;

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- (b) limited to any warranty to which BPS is entitled, if BPS did not manufacture the Materials;
 - (c) otherwise negated absolutely.
- 17.9 Subject to this clause 17, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 17.1; and
 - (b) BPS has agreed that the Materials are defective; and
 - (c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 17.10 Notwithstanding clauses 17.1 to 17.9 but subject to the CCA, BPS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Materials;
 - (b) the Client using the Materials for any purpose other than that for which they were designed;
 - (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Works by the Client or any third party without BPS' prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by BPS;
 - (f) fair wear and tear, any accident, or act of God.
- 17.11 In the case of second hand Materials, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Materials prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by BPS as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that BPS has agreed to provide the Client with the second hand Materials and calculated the Price of the second hand Materials in reliance of this clause 17.11.
- 17.12 BPS may in its absolute discretion accept non-defective stock standard Materials which are in saleable condition for return in which case BPS may require the Client to pay handling fees of up to thirty percent (30%) of the value of the returned Materials plus any freight costs.
- 17.13 Notwithstanding anything contained in this clause if BPS is required by a law to accept a return then BPS will only accept a return on the conditions imposed by that law.

18. Intellectual Property

- 18.1 Where BPS has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in BPS, and shall only be used by the Client at BPS' discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of BPS.
- 18.2 The Client warrants that all designs, specifications or instructions given to BPS will not cause BPS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify BPS against any action taken by a third party against BPS in respect of any such infringement.
- 18.3 The Client agrees that BPS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which BPS has created for the Client.

19. Default and Consequences of Default

- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at BPS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes BPS any money the Client shall indemnify BPS from and against all costs and disbursements incurred by BPS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, BPS' contract default fee, and bank dishonour fees).
- 19.3 Further to any other rights or remedies BPS may have under this contract, if a Client has made payment to BPS, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by BPS under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 19.4 Without prejudice to BPS' other remedies at law BPS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to BPS shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to BPS becomes overdue, or in BPS' opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by BPS;
 - (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Cancellation

- 20.1 Without prejudice to any other remedies BPS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions BPS may suspend or terminate the supply of Works to the Client. BPS will not be liable to the Client for any loss or damage the Client suffers because BPS has exercised its rights under this clause.
- 20.2 BPS may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice BPS shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to BPS for Works already performed. BPS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by BPS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

21. Privacy Act 1988

- 21.1 The Client agrees for BPS to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by BPS.
- 21.2 The Client agrees that BPS may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 21.3 The Client consents to BPS being given a consumer credit report to collect overdue payment on commercial credit.
- 21.4 The Client agrees that personal credit information provided may be used and retained by BPS for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Works.
- 21.5 BPS may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 21.6 The information given to the CRB may include:
- (a) personal information as outlined in 21.1 above;
 - (b) name of the credit provider and that BPS is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and BPS has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of BPS, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 21.7 The Client shall have the right to request (by e-mail) from BPS:
- (a) a copy of the information about the Client retained by BPS and the right to request that BPS correct any incorrect information; and
 - (b) that BPS does not disclose any personal information about the Client for the purpose of direct marketing.
- 21.8 BPS will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 21.9 The Client can make a privacy complaint by contacting BPS via e-mail. BPS will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

22. Building and Construction Industry Payments Act 2004

- 22.1 At BPS' sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Payments Act 2004 may apply.
- 22.2 Nothing in this contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.

23. General

- 23.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which BPS has its principal place of business, and are subject to the jurisdiction of the Mackay Courts in Queensland.
- 23.3 Subject to clause 17, BPS 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 BPS of these terms and conditions (alternatively BPS' liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 23.4 BPS may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 23.5 The Client cannot licence or assign without the written approval of BPS.
- 23.6 BPS may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of BPS' sub-contractors without the authority of BPS.
- 23.7 The Client agrees that BPS may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for BPS to provide Works to the Client.
- 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 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.