

**ALL PROVISION OF GOODS AND SERVICES BY Bourjon Contracting Group and Bourjon Builders Pty Ltd ARE SUBJECT TO THE FOLLOWING TERMS & CONDITIONS**

**1. DEFINITIONS**

1.1 "Bourjon Contracting Group and Bourjon Builders Pty Ltd" means Bourjon Contracting Group and Bourjon Builders Pty Ltd or any subsidiaries, related companies, agents, employees, franchises or sub-contractors of Bourjon Contracting Group and Bourjon Builders Pty Ltd, as appropriate.

1.2 "Customer" means the Recipient and, where the Goods and/or Services are provided as a result of an insurance claim, the Insurer.

1.3 "Due Date" means in respect of each invoice issued to the Customer by Bourjon Contracting Group and Bourjon Builders Pty Ltd, the date that is 7 days after the invoice date or such other date agreed in writing by a director of Bourjon Contracting Group and Bourjon Builders Pty Ltd

1.4 "Event of Default" means an event specified in clause 6.1.

1.5 "Goods" means goods and/or materials provided to the Customer by Bourjon Contracting Group and Bourjon Builders Pty Ltd including but not limited to:

(a) all goods and products supplied by Bourjon Contracting Group and Bourjon Builders Pty Ltd;

(b) all goods identified in any Invoice provided to the Customer by Bourjon Contracting Group and Bourjon Builders Pty Ltd;

(c) all goods marked as having been supplied by Bourjon Contracting Group and Bourjon Builders Pty Ltd; and (d) all of the Customer's present and after acquired property that Bourjon Contracting Group and Bourjon Builders Pty Ltd has performed work on or to or in which goods or materials supplied or financed by Bourjon Contracting Group and Bourjon Builders Pty Ltd have been attached or incorporated.

1.6 "Insurer" means an insurance company that provides an insurance policy to the Customer under which Goods and/or Services may be paid for in whole or in part by the insurance company.

1.7 "Invoice" means an invoice issued by Bourjon Contracting Group and Bourjon Builders Pty Ltd to the Customer.

1.8 "Property" means the land owned by the Customer (either legally or beneficially) where Bourjon Contracting Group and Bourjon Builders Pty Ltd provides Goods and/or Services.

1.9 "Quote" means a quotation from Bourjon Contracting Group and Bourjon Builders Pty Ltd to the Customer for the supply of Goods and/or Services.

1.10 "Recipient" means the party or parties receiving Goods and/or Services from Bourjon Contracting Group and Bourjon Builders Pty Ltd.

1.11 "Services" means services provided to the Customer by Bourjon Contracting Group and Bourjon Builders Pty Ltd and includes, without limitation, charges for labour, hire charges, insurance charges or any other fee or charge associated with the supply of Goods or Services by Bourjon Contracting Group and Bourjon Builders Pty Ltd to the Customer.

1.12 "Terms and Conditions" means these terms and conditions.

**2. ACCEPTANCE OF TERMS AND CONDITIONS**

2.1 Any of the following done by or on behalf of the Customer shall constitute a binding contract and acceptance of these Terms and Conditions:

(a) acceptance of any Quote;

(b) the giving of any instructions to Bourjon Contracting Group and Bourjon Builders Pty Ltd that are acted upon; or (c) any express or implied authority given to Bourjon Contracting Group and Bourjon Builders Pty Ltd to provide Goods or Services to the Customer.

**3. CUSTOMER INFORMATION**

3.1 The Customer authorizes Bourjon Contracting Group and Bourjon Builders Pty Ltd to collect such commercial, financial and personal information about the Customer as is necessary for assessing the credit worthiness of the Customer or enforcing Bourjon Contracting Group and Bourjon Builders Pty Ltd' rights under these Terms and Conditions and further authorises Bourjon Contracting Group and Bourjon Builders Pty Ltd to disclose such information to other parties for those purposes.

3.2 Where the Customer is a natural person, the authority given pursuant to clause 3.1 shall constitute sufficient authority for the purposes of the Privacy Act 1993 and the Customer acknowledges that he or she has a right to access the information and request corrections to it.

**4. RESERVATION OF TITLE AND LIABILITY FOR PAYMENT**

4.1 Payment for Goods and Services supplied by Bourjon Contracting Group and Bourjon Builders Pty Ltd is due on the Due Date unless otherwise approved in writing by a director of Bourjon Contracting Group and Bourjon Builders Pty Ltd. Bourjon Contracting Group and Bourjon Builders Pty Ltd may in its sole discretion decide that no Goods or Services shall be supplied to the Customer until payment is received by Bourjon Contracting Group and Bourjon Builders Pty Ltd in advance of supply of the Goods or Services. All payments for Goods or Services in any circumstances made by cheque shall not be taken to be effective in payment until the bank clearance of funds for the cheque.

4.2 Property and ownership in any Goods will not pass to the Customer but will remain with Bourjon Contracting Group and Bourjon Builders Pty Ltd until payment in full of the purchase price of the Goods and all other amounts owing to Bourjon Contracting Group and Bourjon Builders Pty Ltd by the Customer and all Goods shall be subject to a purchase money security interest.

4.3 Where the provision of Goods and/or Services is not completed within 7 days of the commencement of the job, Bourjon Contracting Group and Bourjon Builders Pty Ltd shall be entitled to issue invoices for progress payments at weekly intervals.

4.4 Risk in the Goods shall pass at the time of delivery.

4.5 Where Goods and/or Services are provided as a result of an insurance claim the Recipient and the Insurer shall be jointly and severally liable to Bourjon Contracting Group and Bourjon Builders Pty Ltd for any amounts due to Bourjon Contracting Group and Bourjon Builders Pty Ltd pursuant to these Terms and Conditions including, but not limited to, amounts in respect of any insurance excess, taxes or costs of recovery.

4.6 In addition to other amounts payable to Bourjon Contracting Group and Bourjon Builders Pty Ltd the Customer will be liable to pay to Bourjon Contracting Group and Bourjon Builders Pty Ltd as and when lawfully demanded any Goods and Services or similar taxes (GST) that are incurred Bourjon Contracting Group and Bourjon Builders Pty Ltd as a result of making a supply to the Customer that is a taxable supply under any GST law applicable in Australia.

4.7 If payment for any Goods or Services is not made by the Customer to Bourjon Contracting Group and Bourjon Builders Pty Ltd in full by the Due Date, the following provisions shall apply:

(a) The Customer shall deliver the Goods to Bourjon Contracting Group and Bourjon Builders Pty Ltd on demand. In the event that the Customer does not comply with a demand immediately upon receipt or deemed receipt of the demand, Bourjon Contracting Group and Bourjon Builders Pty Ltd shall be entitled to enter upon the Customer's premises at any time and do all things necessary to take possession of the Goods. The Customer hereby grants permission and an irrevocable license to Bourjon Contracting Group and Bourjon Builders Pty Ltd to enter upon the premises where the Goods shall be for the purpose of doing anything necessary to take possession of the Goods;

(b) The Customer will pay interest on all amounts owing to Bourjon Contracting Group and Bourjon Builders Pty Ltd from the Due Date to the date or dates of payment at the rate of 18% per annum to Bourjon Contracting Group and Bourjon Builders Pty Ltd the current statutory rate plus 5% administration or such lesser rate as Bourjon Contracting Group and Bourjon Builders Pty Ltd may accept in lieu thereof; and

4.8 The Customer will be responsible for all costs incurred by Bourjon Contracting Group and Bourjon Builders Pty Ltd in exercising its rights under the Terms and Conditions including, but not limited to, debt collection costs and legal fees properly incurred by Bourjon Contracting Group and Bourjon Builders Pty Ltd in seeking or obtaining recovery of amounts owing by the Customer to Bourjon Contracting Group and Bourjon Builders Pty Ltd and including all such expenses as are actually incurred by Bourjon Contracting Group and Bourjon Builders Pty Ltd.

4.9 Notwithstanding any request or stipulation to the contrary made by or on behalf of the Customer, any payment received by Bourjon Contracting Group and Bourjon Builders Pty Ltd from the Customer may be appropriated by Bourjon Contracting Group and Bourjon Builders Pty Ltd to discharge such liability or other obligation of the Customer to Bourjon Contracting Group and Bourjon Builders Pty Ltd as Bourjon Contracting Group and Bourjon Builders Pty Ltd sees fit.

**5. QUOTES**

5.1 Where a Quote is provided by Bourjon Contracting Group and Bourjon Builders Pty Ltd to the Customer:

(a) the Quote shall be valid for a period of 14 days from the date of the Quote; and

(b) any express or implied acceptance of the Quote by or on behalf of the Customer shall constitute acceptance of these Terms and Conditions.

5.2 Bourjon Contracting Group and Bourjon Builders Pty Ltd reserves the right by notice to the Customer to alter or amend any Quote before receipt by Bourjon Contracting Group and Bourjon Builders Pty Ltd of acceptance of the Quote by the Customer.

5.3 Bourjon Contracting Group and Bourjon Builders Pty Ltd reserves the right, by notice to the Customer, to alter or amend any Quote at any time prior to the supply of Goods and/or Services where the alteration or amendment is due

to a increase in the cost to Bourjon Contracting Group and Bourjon Builders Pty Ltd of any Goods or Services the subject of the Quote that is beyond the control of Bourjon Contracting Group and Bourjon Builders Pty Ltd.

5.4 Where the Customer requests Goods or Services to be provided that are not included in the Quote, the Customer agrees to pay the additional cost of such Goods and/or Services and the provision of the additional Goods and/or Services shall be pursuant to these Terms and Conditions. All Quotes are issued under the assumption that existing structures comply with relevant building codes and standards, as per the BCA Building act 1993. Non-compliant structures may result in additional costs.

5.5 If any materials specified in any Quote are not available when required by Bourjon Contracting Group and Bourjon Builders Pty Ltd, Bourjon Contracting Group and Bourjon Builders Pty Ltd may, with the consent of the Customer, supply a substitute material of a similar nature and quality and the Customer shall not unreasonably withhold consent. Any variation in cost arising from the use of substitute materials shall be allowed for or paid as an extra by the Customer

5.6 The Customer shall be liable for the cost of any site visit where less than 2 working days notice of cancellation is given Bourjon Contracting Group and Bourjon Builders Pty Ltd or where additional site visits are required as a result of delays caused by the Customer or where the Customer has not accurately provided all required information to Bourjon Contracting Group and Bourjon Builders Pty Ltd .

**6. DEFAULT**

6.1 The following events shall constitute an Event of Default by the Customer:

(a) The failure of the Customer to make payment for the Goods by the Due Date or the intimation by the Customer that it will not pay any sum by the Due Date;

(b) The Customer enters into an agreement for the sale or proposed sale of its business or assets;

(c) The Customer commits a breach of any of the Terms and Conditions and in the event that such breach is capable of

remedy, the Customer fails to remedy the breach upon receiving notice from Bourjon Contracting Group and Bourjon Builders Pty Ltd specifying the breach and requiring that it be remedied within 7 days of such notice; and

(d) The Customer is adjudicated bankrupt, or a receiver, liquidator or official assignee, administrator or statutory manager is appointed to the Customer or its business or assets, or any part of its assets, or the Customer is unable to pay its debts when due within the meaning of the Companies Act 1993, or Bourjon Contracting Group and Bourjon Builders Pty Ltd, acting reasonably, believes the Customer is likely to become unable to pay its debts when due, or execution of judgments for amounts over the sum of \$10,000 is levied against it and not discharged within thirty (30) days or within the terms of any arrangement made with the judgment creditor, whichever is the later.

6.2 Upon the occurrence of an Event of Default:

(a) Any amounts currently outstanding shall become immediately due and the Due Date for all amounts shall be deemed to the earlier of the actual Due Date or the date that the Event of Default occurs; and

(b) Bourjon Contracting Group and Bourjon Builders Pty Ltd may in its sole discretion cancel or suspend the provision of Goods and/or Services to the Customer.

**7. CANCELLATION AND WITHDRAWAL OF ORDERS**

7.1 The Customer may not defer or cancel an order once accepted by Bourjon Contracting Group and Bourjon Builders Pty Ltd or once a Quote has been accepted without Bourjon Contracting Group and Bourjon Builders Pty Ltd' consent in writing and with any request for an amendment, deferment or cancellation, the Customer must provide Bourjon Contracting Group and Bourjon Builders Pty Ltd with 7 days notification in advance.

7.2 The Customer shall be responsible for and agrees to indemnify Bourjon Contracting Group and Bourjon Builders Pty Ltd for all costs incurred by Bourjon Contracting Group and Bourjon Builders Pty Ltd as a result of the Customer cancelling an order or the suspension of the provision of Goods or Services as a result of the occurrence of an Event of Default.

7.3 In the event that the provision of Goods and/or Services to the Customer is cancelled, suspended or terminated for any reason Bourjon Contracting Group and Bourjon Builders Pty Ltd shall have no responsibility whatsoever for any loss or damage of any kind which may result directly or indirectly from such cancellation or suspension or from any recovery of Goods pursuant to the provisions of these Terms and Conditions.

**8. LIMITATIONS ON LIABILITY Description**

8.1 Any description of the Goods and/or Services is given by way of identification and shall not constitute the contract a sale by description. The Customer shall take the Goods at the Customer's own risk as to their quality, conditions or suitability for any purpose.

**Liability**

8.2 Bourjon Contracting Group and Bourjon Builders Pty Ltd' liability for damages arising out of or in connection with any contract for the sale of Goods or the supply of Services to the Customer will be limited to claims in relation to faulty Goods as set out in clause 8.4, and all conditions and warranties expressed or implied by statute the common law, equity, trade custom or usage or otherwise howsoever are hereby expressly excluded to the maximum extent permitted by law.

## **Faulty Goods**

8.3 Any claims for faulty Goods must be fully documented and referred to the Bourjon Contracting Group and Bourjon Builders Pty Ltd representative with whom the Customer has customary contact within 3 days of works under the amount of \$50,000 and 7 days for works over the amount of \$50,000 of works being completed. Acceptance of any items will not constitute acceptance of claims. All items will be subject to inspection by Bourjon Contracting Group and Bourjon Builders Pty Ltd before Liability will be considered.

8.4 To the extent permitted by law, Bourjon Contracting Group and Bourjon Builders Pty Ltd shall have sole right to decide whether Goods are capable of repair and Bourjon Contracting Group and Bourjon Builders Pty Ltd' liability (if any) in respect of claims under any contract arising hereunder shall be limited as follows:

- (a) Where the Goods are capable of repair, to the repair of the Goods or the payment of the cost of having the Goods repaired, or
- (b) Where the Goods are incapable of repair to the replacement of the Goods or the supply of equivalent Goods or the payment of the cost of replacing the Goods or of acquiring equivalent Goods.

8.5 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires

Goods and/or Services from Bourjon Contracting Group and Bourjon Builders Pty Ltd for business purposes in terms of sections 2 and 43 of that act.

### **Indirect Loss**

8.6 So far as the law permits, Bourjon Contracting Group and Bourjon Builders Pty Ltd shall not be liable in any way whatsoever for any indirect or consequential loss or loss of profit arising from contract or otherwise including in particular, but not limited to, any loss by reason of delay, defective or faulty materials or workmanship, negligence or any act or matter or thing done, permitted or omitted by Bourjon Contracting Group and Bourjon Builders Pty Ltd and the Customer shall have no rights to off-set claims against the invoiced prices for Goods under any circumstances.

8.7 The Customer shall indemnify Bourjon Contracting Group and Bourjon Builders Pty Ltd against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing whether caused or arising as a result of the negligence of Bourjon Contracting Group and Bourjon Builders Pty Ltd or otherwise, brought by any person in connection with any matter, act, omission, or error by Bourjon Contracting Group and Bourjon Builders Pty Ltd in connection with the Goods and/or Services.

8.8 If, contrary to the disclaimer of liability contained in these Terms and Conditions Bourjon Contracting Group and Bourjon Builders Pty Ltd is forced or deemed to be liable, following or arising from the supply of Goods or Services to the Customer, then such liability is limited in aggregate to \$100.00.

## **9. WARRANTY AS TO INFORMATION**

9.1 The Customer and any other signatories to a form that incorporates these Terms and Conditions on behalf of the Customer hereby warrant to Bourjon Contracting Group and Bourjon Builders Pty Ltd jointly and severally that all the information provided to Bourjon Contracting Group and Bourjon Builders Pty Ltd in or in connection with any Goods or Services to be provided by Bourjon Contracting Group and Bourjon Builders Pty Ltd or otherwise are true and correct and hereby jointly and severally indemnify Bourjon Contracting Group and Bourjon Builders Pty Ltd from and against all loss, claims, demands and costs occasioned as a result of such information not being correct in any particular. The Customer further undertakes to notify Bourjon Contracting Group and Bourjon Builders Pty Ltd of any change in its circumstances, which renders any information provided to Bourjon Contracting Group and Bourjon Builders Pty Ltd likely to be inaccurate, misleading or obsolete.

9.2 The Customer acknowledges that it has received, read and understood a copy of these Terms and Conditions.

9.3 In the event that at any time due to any circumstance including, but not limited to, pressures of trading, adverse marketing conditions, financial pressure from lenders, failure to pay rent, the failure to pay taxation, internal conflicts or any other cause, there is reason for the Customer or any of its officers or others being signatories to

a form incorporates these Terms and Conditions, to suspect that the Customer may be or may become unable to pay its debts when due within the meaning of the Companies Act 1993, or may be adjudicated bankrupt or have a receiver, a liquidator or official assignee, administrator or statutory manager appointed to the Customer then the Customer will notify Building Solutions immediately.

## **10. EXCLUSIONS AND VARIATIONS**

10.1 Bourjon Contracting Group and Bourjon Builders Pty Ltd shall have the right to vary or amend any of the provisions of these Terms and Conditions at any time. The most current version of the Terms and Conditions are located on Bourjon Contracting Group and Bourjon Builders Pty Ltd website at

[www.bourjon.com.au](http://www.bourjon.com.au). Any Goods or Services provided by Bourjon Contracting Group and Bourjon Builders Pty Ltd to the Customer after the date of a variation shall be deemed to be provided subject to the Terms and Conditions as varied.

## **11. PPSA**

11.1 The Customer grants a security interest under the

Personal Property Securities Act 1999 ("PPSA") over any Goods supplied by Bourjon Contracting Group and Bourjon Builders Pty Ltd to the Customer. The Customer shall at Bourjon Contracting Group and Bourjon Builders Pty Ltd' request, promptly execute or do any document, contract, agreement, deeds or other action as Building Solutions may require to ensure that any security interest created constitutes a perfected security interest over the Goods. This includes providing any information Bourjon Contracting Group and Bourjon Builders Pty Ltd may request to complete a financing statement or a financing change statement for the Personal Properties Security Register.

11.2 The Customer waives any right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest under PPSA.

11.3 Nothing in sections 114(1)(a), 117(1), 133 and 134 of the PPSA shall apply to these Terms and Conditions. The Customer's rights as a debtor in sections 116, 119, 120(2), 121, 125-127, 129 and 132 of the PPSA shall not apply to these Terms and Conditions.

## **12. CONSENTS**

12.1 The Customer acknowledges that unless otherwise agreed in writing between the Customer and Bourjon Contracting Group and Bourjon Builders Pty Ltd, the Customer is responsible for obtaining any required building or resource consents in respect of the Services.

## **13. MISCELLANEOUS**

### **Notices**

13.1 All notices authorised or required to be made under these Terms and Conditions shall be sent by facsimile transmission, delivered personally or sent by prepaid mail and in each case addressed to the party at the address provided herein or at such other address as each party may from time to time notify to the other parties. All notices shall be deemed to have been received the day they are sent except where sent by post that shall be deemed to have been received two (2) days after the date of posting and where sent by facsimile transmission upon receipt of the correct and complete transmission report at the close of transmission.

### **Governing Law And Jurisdiction**

13.2 Any contracts between Bourjon Contracting Group and Bourjon Builders Pty Ltd and the Customer shall be deemed to have been made in Australia and the construction validity and performance thereof shall be governed in all respects by the law for the time being in force in Australia.

13.3 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Australia and Courts entitled to hear appeals from those Courts.

### **Entire Agreement And Waiver**

13.4 Save as specifically and expressly contemplated in these Terms and Conditions no provision hereof shall be changed, waived or modified without the express written agreement of Bourjon Contracting Group and Bourjon Builders Pty Ltd.

13.5 These Terms and Conditions embody the entire agreement of the Customer and Bourjon Contracting Group and Bourjon Builders Pty Ltd in respect of the ordering, supply, delivery of and payment for Goods or Services, and any order received by Bourjon Contracting Group and Bourjon Builders Pty Ltd from the Customer shall be deemed to incorporate these Terms and Conditions notwithstanding any purported change to the Terms and Conditions specified by the customer.

13.6 Any waiver or failure to execute any rights by Bourjon Contracting Group and Bourjon Builders Pty Ltd shall not be deemed a waiver of any further or other right of Bourjon Contracting Group and Bourjon Builders Pty Ltd in respect of the Customer.

13.7 The Customer shall not be entitled to rely upon any statement of any kind made by a person including a representative or agent of Bourjon Contracting Group and Bourjon Builders Pty Ltd, which include a representation of any kind, which contradicts or is contrary to these Terms and Conditions.

### **Severance**

13.8 Bourjon Contracting Group and Bourjon Builders Pty Ltd and the Customer agree that:

- (a) All the provisions of these Terms and Conditions are reasonable in all the circumstances and each provision is and will be deemed to be severable and independent; and
- (b) If any provision hereof is found by any Court of competent jurisdiction to be invalid, illegal or unenforceable in any respect the validity, legality and enforceability of the remaining provisions will not be affected and the invalid, illegal or unenforceable provision shall be severed from this document it being the intention of the parties that had they known that any such provision would be invalid, illegal or unenforceable in any respect they would have agreed upon and accepted the remaining Terms and Conditions hereof.

### **Interest of Bourjon Contracting Group and Bourjon Builders Pty Ltd**

13.9 The Customer agrees that Bourjon Contracting Group and Bourjon Builders Pty Ltd shall have a caveatable interest in the Property to protect its rights and interest under these Terms and Conditions, and for this purpose the Customer agrees to grant to Bourjon Contracting Group and Bourjon Builders Pty Ltd a mortgage over each

Property, subject to all existing prior interests and charges, to secure Bourjon Contracting Group and Bourjon Builders Pty Ltd' interests under these Terms and Conditions. The mortgage shall be on the all obligations Australia's District Law Society form of mortgage and shall be signed by the Customer on demand by Bourjon Contracting Group and Bourjon Builders Pty Ltd. The Customer shall produce titles and do all other things as required to achieve registration of such mortgages, and irrevocably appoints Bourjon Contracting Group and Bourjon Builders Pty Ltd and each director and secretary of Bourjon Contracting Group and Bourjon Builders Pty Ltd as its attorney to sign such mortgages.

### **Power Of Attorney**

13.10 The Customer hereby irrevocably appoints each of the directors of Bourjon Contracting Group and Bourjon Builders Pty Ltd at any time and from time to time jointly and severally as its attorney in the event of default by the Customer in the payment of any monies due and owing by the Customer to Bourjon Contracting Group and Bourjon Builders Pty Ltd and that default continuing for more than 14 days after due date for payment for the purpose of:

- (a) taking possession of the Goods of Bourjon Contracting Group and Bourjon Builders Pty Ltd held by the Customer or on the Property and disposing of such Goods owned by it;
- (b) enforcing its rights pursuant to clause 13.9, to the extent necessary to recover any monies owing to Bourjon Contracting Group and Bourjon Builders Pty Ltd by the Customer and any costs incurred by Bourjon Contracting Group and Bourjon Builders Pty Ltd in connection with such recovery.

### **Headings**

13.11 Headings in these Terms and Conditions are for convenience only and are not to be taken into account in interpretation of this document.