

Terms & Conditions of Trade

1 Definitions:

- 1.01 "CPS" means Callide Plumbing Services Pty Ltd ATF CPS Unit Trust trading as Callide Plumbing Services, its successors and assigns, and any person acting on behalf of and with the authority of CPS.
- 1.02 "Customer" means the person, company, or other entity ordering the Works as specified in any invoice, document, or order, and, if there is more than one Customer, refers to each Customer jointly and severally.
- 1.03 "Works" means all works (including consultation, supply, installation, and/or services) supplied by CPS to the Customer at the Customer's request from time to time.
- 1.04 "Materials" means all goods, products, parts, components, and items supplied by CPS to the Customer (whether separately or as part of the Works).
- 1.05 "Price" means the price payable (plus any applicable GST) for the Works, as agreed between CPS and the Customer in accordance with clause 5.
- 1.06 "GST" means goods and services tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

2 Acceptance:

- 2.01 The Customer is deemed to have accepted these terms and conditions and is immediately bound (jointly and severally, where applicable) if the Customer does any of the following:
 - (a) places an order for the Works.
 - (b) accepts any quotation or estimate provided by CPS.
 - (c) requests CPS to provide the Works (whether verbally, in writing, by SMS, email, online booking, or otherwise).
 - (d) instructs CPS to commence or continue the Works; or
 - (e) accepts delivery of, or is present at the site and permits, the Works to proceed.
- 2.02 These terms and conditions are available on CPS's website and are provided to the Customer with any quotation, booking confirmation, SMS, email communication, invoice, or other document. The Customer acknowledges that it is their responsibility to review these terms prior to requesting or accepting the Works. The Customer agrees that these terms are readily accessible and have been sufficiently brought to their attention.
- 2.03 The Customer agrees that any failure to read or review these terms and conditions does not affect their validity or enforceability.
- 2.04 By requesting CPS to commence or continue the Works (including by phone, SMS, email, online booking, or in person), the Customer is deemed to have read, understood, and accepted these terms and conditions in full, regardless of whether the Customer has physically signed this document.
- 2.05 Where CPS is required to provide the Works urgently, including outside normal business hours (such as evenings, weekends, or public holidays), the Customer acknowledges that there may not be sufficient time to review these terms prior to commencement and agrees that these terms will nevertheless apply. CPS reserves the right to charge a minimum of two (2) hours' labour at applicable penalty rates, unless otherwise agreed in writing.
- 2.06 The Customer warrants that any person requesting, instructing, or approving the Works at the site is authorised to do so on behalf of the Customer and to bind the Customer to these terms and conditions.
- 2.07 These terms and conditions may only be amended with the prior written consent of CPS and shall prevail to the extent of any inconsistency with any other document or agreement between CPS and the Customer.
- 2.08 Any advice, recommendations, information, assistance, or services provided by CPS or its agents regarding the Materials or the Works are given in good faith. To the extent permitted by law, CPS shall not be liable for any loss, damage, or costs arising from the Customer's reliance on such information. No agent or representative of CPS is authorised to make any representation, statement, condition, or agreement not expressly confirmed in writing by CPS, and CPS shall not be bound by any such unauthorised statements.
- 2.09 **Agents / Property Managers:** Where the Customer is acting on behalf of another party (including, but not limited to, a landlord or property owner), the Customer warrants that it has full authority to bind that party to these terms and conditions. The Customer further agrees that it is jointly and severally liable with that party for all amounts owing to CPS, whether CPS has been provided with the principal's details. If the Customer acts as an agent and fails to pay any amount owing, CPS may recover the full amount from the Customer as if it were the principal. CPS is not required to first pursue the principal before seeking payment from the Customer.

3 Electronic Transactions (Queensland) Act 2001:

- 3.01 The parties agree that electronic signatures are valid and binding and may be used to execute or accept this agreement, including acceptance by email, SMS, online platform, or other electronic means, provided that the requirements of section 14 of the *Electronic Transactions (Queensland) Act 2001* (Qld), or any other applicable law, have been satisfied.

4 Change in Control:

- 4.01 The Customer must give CPS not less than fourteen (14) days' prior written notice of:

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- (a) any proposed change in ownership or control of the Customer; and/or
 - (b) any change to the Customer's details, including (but not limited to) its name, address, contact details, or business practices.
- 4.02** The Customer shall be liable for any loss, damage, or costs incurred by CPS because of the Customer's failure to comply with this clause.
- 4.03** CPS may, at its sole discretion, suspend the supply of Works or withdraw any credit facilities until it is satisfied with the Customer's updated details and financial position.

5 Price and Payment:

- 5.01** At CPS's sole discretion, the Price shall be either:
- (a) as indicated on invoices issued by CPS to the Customer for Works performed and/or Materials supplied.
 - (b) CPS's Price at the date of delivery of the Works in accordance with CPS's current Schedule of Rates (SoR); or
 - (c) CPS's quoted Price (subject to clause 5.02), which shall be binding on CPS provided that the Customer accepts the quotation within seven (7) days.
- 5.02** CPS reserves the right to vary the Price:
- (a) if a variation to the Materials is requested.
 - (b) if a variation to the Works originally scheduled (including any plans or specifications) is requested.
 - (c) where additional Works are required due to the discovery of hidden or unforeseen conditions (including, but not limited to, site access limitations, safety issues including asbestos, incomplete third-party work, design changes, underground obstructions, or concealed services) which are only discovered after the Works commence; or
 - (d) in the event of increases in CPS's labour or material costs beyond CPS's reasonable control.
- 5.03** Any variation to the Works will be charged in addition to the Price. CPS will, where practicable, notify the Customer of any variation prior to carrying out the additional Works. Where the Customer does not object within a reasonable time, CPS may proceed with the variation, and the cost shall be added to the Price. All variations must be paid in full upon completion of the additional Works.
- 5.04** At CPS's sole discretion, a non-refundable deposit may be required prior to commencement of the Works.
- 5.05** Time for payment is of the essence. The Price is payable by the Customer on the date determined by CPS, which may be:
- (a) upon completion of the Works.
 - (b) seven (7) days from the date of invoice.
 - (c) any other date specified by CPS in writing.
- 5.06** Payment may be made by cash, cheque, bank cheque, electronic/online banking, credit card (a surcharge may apply), or by any other method agreed between CPS and the Customer.
- 5.07** The Customer is not entitled to set off or deduct from the Price any amounts owed or claimed to be owed by CPS, nor to withhold payment of any invoice due to any dispute affecting part of that invoice.
- 5.08** Unless otherwise stated, the Price excludes GST. In addition to the Price, the Customer must pay CPS an amount equal to any GST payable by CPS on any supply under this agreement. The Customer must pay GST at the same time and on the same basis as the Price, without deduction or set off. The Customer must also pay any applicable taxes and duties unless expressly included in the Price.
- 5.09** **Progress Payments (Applicable to Larger Works)** - For Works with a total contract value exceeding five thousand dollars (\$5,000.00), CPS may require payment by instalments as follows:
- (a) a deposit of up to thirty percent (30%) upon acceptance of CPS's quotation.
 - (b) a progress payment of up to forty percent (40%) upon delivery of Materials to the site or at a stage reasonably determined by CPS; and
 - (c) the balance upon completion of the Works.
- 5.10** CPS reserves the right to specify alternative progress payment schedules in its quotation. Time for payment is of the essence, and CPS may suspend the Works in accordance with clause 21 if any progress payment is not made when due.
- 5.11** CPS may, at its sole discretion, require payment in full of any outstanding invoices before continuing the Works and may suspend the Works until such payment is received.

6 Provision of the Works:

- 6.01** Subject to clause 6.02, CPS will use reasonable endeavours to ensure that the Works commence as soon as reasonably practicable.
- 6.02** The commencement date for the Works may be delayed and/or the completion date extended for such period as is reasonable where CPS claims an extension of time by providing written notice to the Customer. Extensions may be claimed where the Works are delayed by any event beyond CPS's reasonable control, including (but not limited to) the Customer's failure to:
- (a) make selections; or
 - (b) have the site ready for the Works; or
 - (c) notify CPS that the site is ready.

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- 6.03** Any time specified by CPS for commencement, delivery, or completion of the Works is an estimate only and is not of the essence. CPS shall not be liable for any loss or damage suffered by the Customer as a result of any delay. Both parties agree to use reasonable endeavours to ensure that the Works are carried out at the agreed time and place. If CPS is unable to carry out the Works as agreed due solely to any act or omission of the Customer, CPS may charge a reasonable fee for re-attendance, delay, and/or storage of Materials.
- 6.04** CPS may reschedule the Works at its discretion where delays are caused by the Customer.

7 Risk:

- 7.01** If CPS retains ownership of the Materials under clause 15:
- (a) Materials supplied only:** All risk in the Materials passes to the Customer upon delivery. The Customer must ensure the Materials are insured from the time of delivery. Delivery is deemed to occur at the earlier of:
- (i)** the Customer or the Customer's nominated carrier taking possession of the Materials at CPS's premises; or
 - (ii)** the Materials being delivered by CPS or CPS's nominated carrier to the Customer's nominated delivery address (whether the Customer is present).
- (b) Supply and Installation:** Where CPS supplies and installs the Materials, CPS will maintain contract works insurance until completion of the Works. Upon completion, all risk passes to the Customer.
- 7.02** The cost of delivery is included in the Price unless otherwise agreed in writing.
- 7.03** Notwithstanding clause 7.01, if the Customer requests CPS to leave Materials at an unattended location or available for collection, the Materials are left entirely at the Customer's risk. The Customer is responsible for ensuring the Materials are adequately insured. If the Materials are lost, damaged, or destroyed, replacement will be at the Customer's cost.
- 7.04** CPS is entitled to rely on the accuracy of any plans, specifications, or other information provided by the Customer. To the extent permitted by law, CPS is not liable for any loss, damage, or costs arising from any inaccuracy in such information.
- 7.05** The installation of certain appliances may cause issues (including water hammer or damage to existing pipework). To the extent permitted by law, the Customer indemnifies CPS against any loss, damage, or claim arising where existing pipework or infrastructure is unable to accommodate the installation.
- 7.06** The Customer warrants that any structures to which Materials are to be affixed are suitable for installation, and that all plumbing connections are of adequate capacity. If CPS reasonably considers the premises unsafe or unsuitable (including due to asbestos, defective plumbing, or restricted access), CPS may delay the Works in accordance with clause 6.02. Any additional work required to make the premises suitable will be treated as a variation.
- 7.07** The Customer acknowledges that blockages (including plant or tree roots) may indicate underlying pipe damage. Where CPS is requested to clear such blockages, CPS does not guarantee that further issues will not occur. If pipe collapse occurs during the clearing process, CPS will notify the Customer and provide an estimate for repair.
- 7.08** Where CPS performs temporary repairs:
- (a)** CPS provides no guarantee against recurrence of the fault or any further damage; and
 - (b)** CPS will advise the Customer of the fault and provide an estimate for permanent repair.
- 7.09** CPS is only responsible for workmanship and Materials supplied by CPS. To the extent permitted by law, CPS is not liable for any defect or failure arising from work or goods supplied by third parties.
- 7.10** Where the Customer supplies goods for CPS to install, the Customer is solely responsible for the suitability and quality of those goods. CPS is not liable for any defects in, or arising from, Customer-supplied goods.
- 7.11** Subject to clause 18, where the Customer supplies goods, CPS's liability is limited to its workmanship only.
- 7.12** The Customer acknowledges that Materials may:
- (a)** fade or change colour over time.
 - (b)** expand, contract, or distort due to environmental conditions.
 - (c)** mark or stain when exposed to certain substances.
 - (d)** be damaged by impact or misuse; and
 - (e)** produce odours as part of normal operation.
- 7.13** Where an anodised surface finish is selected, slight colour variations may occur between components due to differences in metal alloys and manufacturing tolerances. Such variations do not constitute a defect.
- 7.14** Where CPS carries out repairs to existing tile roofs, the Works are based on replacing visibly damaged tiles only and do not include the replacement of tiles with minor imperfections unless expressly agreed prior to commencement. Any additional work requested by the Customer will be treated as a variation in accordance with clause 5.02.
- 7.15** The Customer acknowledges and agrees that no person other than CPS's authorised personnel may access or walk on any treated roof surface for a period of twenty-one (21) days after completion of the Works, and that no persons are permitted in the work area during the Works. CPS shall not be liable for any loss, damage, injury, or cost arising from the Customer's failure to comply with this clause.

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7.16 CPS is not liable for any loss or damage (including internal water damage) arising during cleaning or maintenance processes where such loss or damage is caused by pre-existing faults or conditions.

8 Specifications:

8.01 The Customer acknowledges that:

- (a) All descriptive specifications, illustrations, drawings, data, dimensions, ratings, and weights stated in CPS's or the manufacturer's fact sheets, price lists, or advertising material are approximate only and are provided for general information purposes. To the extent permitted by law, such information does not form part of the contract unless expressly confirmed in writing by CPS.
- (b) Any information or figures provided by CPS regarding the performance of the Materials are provided in good faith and are estimates only, based on relevant industry data (including, where applicable, Clean Energy Council (CEC) data, Water Efficiency Labelling and Standards (WELS) scheme data, and other recognised standards). Actual performance or water efficiency may vary due to factors outside CPS's control, including (but not limited to) water pressure, water source, installation conditions, and mineral content.
- (c) To the extent permitted by law, CPS does not warrant that the Materials will achieve any specific performance outcome unless expressly stated in writing.

9 Customers' Responsibilities:

- 9.01** The Customer is responsible for providing and erecting scaffolding where CPS reasonably considers it necessary to carry out the Works. The Customer must ensure that all scaffolding complies with applicable safety standards and is erected by suitably qualified persons holding any required licences or certifications.
- 9.02** The Customer must remove or adequately protect any furniture, furnishings, or personal items in the vicinity of the Works. To the extent permitted by law, CPS is not liable for any loss or damage to such items where the Customer fails to comply with this clause.
- 9.03** The Customer must always provide CPS with safe and unobstructed access to the site. CPS is not liable for any delay or additional costs arising from restricted or unsafe access.

10 Surplus Materials:

- 10.01** Unless otherwise agreed in writing:
 - (a) all demolished Materials remain the property of the Customer; and
 - (b) any Materials supplied or brought to the site by CPS that are not used in the Works remain the property of CPS.
- 10.02** CPS is not responsible for the removal or disposal of demolished Materials unless expressly agreed in writing.

11 Access:

- 11.01** The Customer must ensure that CPS has clear, safe, and unrestricted access to the work site at all times to enable CPS to carry out the Works.
- 11.02** CPS shall not be liable for any loss or damage to the site, including (but not limited to) pathways, driveways, concrete or paved areas, or grassy areas, except to the extent that such loss or damage is caused by CPS's negligence.
- 11.03** CPS is not liable for any delay, additional costs, or inability to carry out the Works arising from restricted, unsafe, or inadequate access to the site.

12 Dial Before You Dig:

- 12.01** The Customer must ensure that all underground services are located by a suitably qualified and licensed service locator prior to the commencement of any Works. The "Dial Before You Dig" (or equivalent) service must be consulted, and all known or identified underground services must be clearly marked on site.
- 12.02** While CPS will take reasonable care to avoid damage to underground services, to the extent permitted by law, the Customer indemnifies CPS against any liability, claims, loss, damage, costs, or fines arising from damage to underground services that were not accurately located, disclosed, or marked by or on behalf of the Customer.
- 12.03** If the Customer requests CPS to engage a licensed service locator, all associated costs will be added to the Price.
- 12.04** CPS is not liable for any delay or additional costs arising from unidentified or incorrectly identified underground services.

13 Underground Locations:

- 13.01** Prior to CPS commencing any Works, the Customer must:
 - (a) identify and clearly mark the location of all underground services on the site; and
 - (b) provide CPS with accurate and complete information regarding the location of such services.
 Underground services include (but are not limited to) electrical, gas, water, sewer, drainage, irrigation, telecommunications, fibre optic, and any other services present on the site.
- 13.02** While CPS will take reasonable care to avoid damage to underground services, to the extent permitted by law, the Customer indemnifies CPS against any liability, claims, loss, damage, costs, or fines arising from damage to underground services that were not accurately identified, disclosed, or marked in accordance with clause 13.01. This clause is in addition to, and does not limit, the Customer's obligations under clause 12.

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14 **Compliance with Laws:**

- 14.01 The Customer and CPS must comply with all applicable statutes, regulations, and bylaws of any government, local authority, or other relevant authority relating to the Works.
- 14.02 The Customer is responsible for obtaining, at its own cost, all necessary licences, permits, consents, and approvals required for the Works, unless otherwise agreed in writing.
- 14.03 The Customer must ensure that the site complies with all applicable work health and safety (WHS) laws and any other relevant safety standards or legislation.
- 14.04 Prior to commencing the Works, CPS may carry out a routine site soundness test to detect any gas leaks in existing pipework. If a leak is detected, CPS may isolate or cap the gas supply until the fault is repaired. Any costs associated with identifying and repairing the fault will be the responsibility of the Customer.
- 14.05 The Customer acknowledges that isolating or turning off the gas supply (including at the meter or gas bottles), as required for testing, may cause existing components within gas appliances to fail (including, but not limited to, thermocouples, pilot assemblies, or valves). To the extent permitted by law, CPS shall not be liable for any such failure, and any associated repair or replacement costs will be borne by the Customer.
- 14.06 CPS may suspend the Works where the site does not comply with applicable laws or safety requirements, and any resulting delay or cost will be the responsibility of the Customer.

15 **Title / Retention of Ownership:**

- 15.01 CPS and the Customer agree that ownership of the Materials shall not pass to the Customer until:
 - (a) the Customer has paid CPS all amounts owing for the Materials; and
 - (b) the Customer has met all other obligations owed to CPS.
- 15.02 Receipt by CPS of any form of payment other than cash shall not constitute payment until that payment has been honoured, cleared, or otherwise recognised by CPS.
- 15.03 Until ownership of the Materials passes in accordance with clause 15.01:
 - (a) the Customer holds the Materials as bailee for CPS and must store them separately (where practicable) and in a manner that clearly identifies them as the property of CPS.
 - (b) the Customer must not sell, dispose of, or otherwise part with possession of the Materials except in the ordinary course of business and for market value, and any proceeds of such sale must be held on trust for CPS and paid to CPS on demand.
 - (c) the Customer holds the benefit of any insurance in respect of the Materials on trust for CPS and must pay to CPS any insurance proceeds if the Materials are lost, damaged, or destroyed.
 - (d) the Customer must not charge, grant an encumbrance over, or otherwise give any interest in the Materials while they remain the property of CPS.
 - (e) CPS may, at any time, upon reasonable notice and to the extent permitted by law, enter any premises where the Materials are reasonably believed to be located to inspect or recover them.
 - (f) CPS may recover possession of any Materials in transit, whether or not delivery has occurred; and
 - (g) CPS may commence proceedings to recover the Price of the Materials, notwithstanding that ownership has not passed to the Customer.
- 15.04 Where the Materials are affixed to or become part of any land or structure, CPS retains a security interest in the Materials to the extent permitted by law.
- 15.05 The Customer must not do anything that would or might prejudice CPS's security interest in the Materials.

16 **Personal Property Securities Act 2009 (Cth) ("PPSA"):**

- 16.01 By accepting these terms and conditions in any manner set out in clause 2, the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and create a security interest in:
 - (a) all Materials supplied by CPS to the Customer (including any proceeds of those Materials); and
 - (b) all present and after-acquired property of the Customer that is, or may become, collateral securing the Customer's obligations to CPS,
 including any monetary obligation of the Customer to CPS for the Works.
- 16.02 The Customer undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (complete, accurate, and up to date in all respects) which CPS may reasonably require to:
 - (i) register, maintain, or amend a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register (PPSR);
 - (ii) register any other document required to be registered under the PPSA; or
 - (iii) correct any defect in any such document.
 - (b) indemnify CPS, on demand, for all expenses incurred in registering, maintaining, or enforcing any security interest created by these terms (including registration fees and legal costs on a solicitor-and-own-client basis);
 - (c) not register or permit to be registered any financing statement or financing change statement in respect of the collateral without the prior written consent of CPS.
 - (d) immediately notify CPS of any material change in its business practices that may affect the proceeds

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derived from the sale of the Materials.

- 16.03** The Customer acknowledges and agrees that the security interest created under this agreement is a continuing security interest and secures all monies owing (or that may become owing) by the Customer to CPS.
- 16.04** To the extent permitted by law, the Customer waives its rights to receive any notice under sections 95, 118, 121(4), 130, 132(3)(d), and 132(4) of the PPSA.
- 16.05** The Customer waives its rights as a grantor and/or debtor under sections 142 and 143 of the PPSA.
- 16.06** Unless otherwise agreed in writing by CPS, the Customer waives its right to receive a verification statement under section 157 of the PPSA.
- 16.07** The Customer agrees that sections 96, 115, and 125 of the PPSA do not apply to the extent permitted by law.
- 16.08** The Customer unconditionally ratifies any actions taken by CPS under this clause 16.
- 16.09** Subject to any express provisions to the contrary, nothing in these terms and conditions is intended to have the effect of contracting out of any provisions of the PPSA, except to the extent permitted by that Act.

17 Security and Charge:

- 17.01** In consideration of CPS agreeing to supply the Works and/or Materials, the Customer charges in favour of CPS all of its rights, title, and interest (whether joint or several) in any land, real property, or other assets capable of being charged, owned by the Customer now or in the future, to secure the performance of the Customer's obligations under these terms and conditions, including the payment of all monies owing to CPS.
- 17.02** The Customer agrees that CPS may, at its discretion and to the extent permitted by law, register a caveat or other security interest over any such land or property to protect its interest under this clause.
- 17.03** The Customer indemnifies CPS against all costs and disbursements (including legal costs on a solicitor-and-own-client basis) incurred by CPS in exercising its rights under this clause.
- 17.04** The Customer irrevocably appoints CPS and each director of CPS as the Customer's attorney to do all acts and things necessary to give effect to this clause, including (but not limited to) executing any document on the Customer's behalf.
- 17.05** CPS will only exercise its rights under this clause where the Customer is in default of its payment obligations under these terms and conditions.

18 Defects, Warranties and Returns; Competition and Consumer Act 2010 (CCA):

- 18.01** The Customer must inspect all Materials on delivery (or the Works on completion) and must notify CPS in writing within seven (7) days of delivery of any evident defect, damage, shortage in quantity, or failure to comply with the description or quotation. Any other alleged defect must be notified as soon as reasonably possible. The Customer must allow CPS to inspect the Materials or review the Works upon such notification.
- 18.02** Certain statutory implied guarantees and warranties under applicable State, Territory, and Commonwealth law, including the CCA ("Non-Excluded Guarantees"), may apply to these terms and conditions.
- 18.03** Nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 18.04** Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, to the extent permitted by law, CPS makes no warranties or representations regarding the Materials or the Works, including their quality, suitability, or fitness for purpose.
- 18.05** If the Customer is a consumer within the meaning of the CCA, CPS' liability is limited to the extent permitted by section 64A of Schedule 2 of the CCA.
- 18.06** If CPS is required to replace any Materials under this clause or the CCA but is unable to do so, CPS may refund any money the Customer has paid for the Materials.
- 18.07** If CPS 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, CPS may refund any money paid for the Works, considering the value of the Materials and Works already supplied which were not defective.
- 18.08** If the Customer is not a consumer within the meaning of the CCA, then to the extent permitted by law, CPS' liability for any defect or damage in the Materials is limited to:
 - (a) the value of any express warranty or warranty card provided by CPS.
 - (b) any warranty to which CPS is entitled if CPS did not manufacture the Materials; or
 - (c) otherwise limited to the lesser of the cost of replacing or repairing the Materials.
- 18.09** Subject to this clause and the CCA, returns will only be accepted if:
 - (a) the Customer has complied with clause 18.01.
 - (b) CPS has agreed that the Materials are defective.
 - (c) the Materials are returned within a reasonable time at the Customer's cost (where the cost is not significant); and
 - (d) the Materials are returned in as close a condition as possible to that in which they were delivered.
- 18.10** Notwithstanding clauses 18.01 to 18.09, but subject to the CCA, CPS shall not be liable for any defect or damage caused or partly caused by:
 - (a) failure by the Customer to properly maintain or store the Materials.
 - (b) use of the Materials for purposes other than those for which they were designed.
 - (c) continued use of the Materials after a defect became or ought reasonably to have become apparent.

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- (d) interference with the Works by the Customer or any third party without CPS' prior approval.
- (e) failure by the Customer to follow instructions or guidelines provided by CPS; or
- (f) fair wear and tear, accident, or act of God.

- 18.11 CPS may, at its discretion, accept non-defective Materials for return. In such cases, CPS may require the Customer to pay a handling fee of up to thirty percent (30%) of the value of the returned Materials plus any associated freight costs.
- 18.12 Where CPS is required by law to accept a return, CPS will do so in accordance with its obligations under the applicable law.

19 **Intellectual Property:**

- 19.01 Where CPS has designed, prepared, or created any designs, drawings, documents, plans, schedules, or other materials in connection with the Works, all intellectual property rights (including copyright) in those materials remain vested in CPS. The Customer must not use, reproduce, or disclose such materials without CPS's prior written consent, except to the extent necessary to use the Works for their intended purpose.
- 19.02 The Customer warrants that any designs, specifications, or instructions provided to CPS will not cause CPS to infringe any patent, registered design, trademark, or other intellectual property right. The Customer indemnifies CPS against any claims, loss, damage, or costs arising from any such infringement.
- 19.03 The Customer agrees that CPS may, at no cost and to the extent permitted by law, use any documents, designs, drawings, plans, or images of the Works for marketing, promotional, or portfolio purposes.
- 19.04 CPS will not disclose any personal or identifying information of the Customer without the Customer's consent, except where required by law or reasonably necessary to perform the Works.
- 19.05 CPS may use de-identified information or images of the Works for marketing, promotional, or portfolio purposes, provided that no personal or identifying information of the Customer is disclosed without consent.

20 **Default and Consequences of Default:**

- 20.01 Interest shall accrue daily on any overdue amount from the due date until the date of payment at a rate of fifteen percent (15%) per month, **or such lesser rate as is the maximum permitted by law or determined by a court**, whichever is lower. Such interest shall be calculated daily and may be compounded monthly at CPS's discretion.
- 20.02 If the Customer defaults in payment of any invoice, the Customer shall indemnify CPS against all costs and disbursements incurred in recovering the debt, including (but not limited to):
- (a) internal administration costs.
 - (b) debt collection agency fees.
 - (c) legal costs on a solicitor-and-own-client basis; and
 - (d) any court or enforcement costs.
- 20.03 If a payment made by the Customer is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction and any further costs incurred by CPS under this clause.
- 20.04 Without prejudice to CPS' other rights or remedies at law, CPS may cancel all or part of any unfulfilled order and all amounts owing to CPS shall become immediately due and payable if:
- (a) any money payable to CPS becomes overdue, or CPS reasonably believes that the Customer will be unable to make payment when due.
 - (b) the Customer exceeds any applicable credit limit.
 - (c) the Customer becomes insolvent, goes bankrupt, enters any arrangement with creditors, or assigns assets for the benefit of creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise), or similar person is appointed over the Customer or any of its assets.
- 20.05 CPS may suspend the Works and require immediate payment of all outstanding amounts where any invoice is overdue.

21 **Cancellation:**

- 21.01 **Suspension of Works** - Without limiting any other rights or remedies available to CPS, if:
- (a) the Customer fails to make any payment when due;
 - (b) the Customer breaches any obligation under these terms and conditions; or
 - (c) CPS reasonably believes that the Customer may be unable to meet its payment obligations,
- then CPS may, **on reasonable notice (where practicable)**, suspend or cease the supply of the Works until such time as the breach is remedied to CPS's satisfaction.
- CPS shall not be liable for any loss, damage, delay, or additional costs suffered by the Customer because of such suspension. The Customer remains liable for all costs incurred by CPS up to the date of suspension, including (but not limited to) labour, Materials, storage, and demobilisation costs.
- CPS may also require payment of all outstanding amounts prior to recommencing the Works.
- 21.02 **Cancellation by CPS** - CPS may cancel any contract to which these terms and conditions apply, or cancel delivery of the Works, at any time before the Works commence by providing written notice to the Customer. Upon such cancellation, CPS shall refund to the Customer any amounts paid, less any amounts owing for Works already performed or costs reasonably incurred by CPS. To the extent permitted by law, CPS shall not

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be liable for any further loss or damage arising from such cancellation.

21.03 Cancellation by Customer - If the Customer cancels any order or delivery of the Works, the Customer shall be liable for all losses incurred by CPS as a direct result of the cancellation, including (but not limited to) loss of profits, labour, Materials, and any costs incurred by CPS up to the date of cancellation.

21.04 Non-Cancellable Items - Orders for goods made to the Customer's specifications, or for non-stock or specially ordered items, cannot be cancelled once production has commenced or an order has been placed with a supplier.

22 Privacy Act 1988 (Cth):

22.01 The Customer authorises CPS to obtain from a credit reporting body (CRB) a credit report containing personal credit information (including, but not limited to, name, address, date of birth, occupation, previous credit applications, and credit history) about the Customer in relation to credit provided by CPS.

22.02 The Customer agrees that CPS may exchange information about the Customer with other credit providers and related bodies corporate for the following purposes:

- (a) assessing an application for credit by the Customer.
- (b) notifying other credit providers of a default by the Customer.
- (c) exchanging information regarding the Customer's credit status where the Customer is in default; and/or
- (d) assessing the Customer's creditworthiness, including repayment history.

22.03 The Customer consents to CPS obtaining a consumer credit report for the purpose of collecting overdue payments relating to commercial credit.

22.04 The Customer agrees that personal information provided to CPS may be used and retained for the following purposes (and for any other purpose required or permitted by law):

- (a) the provision of the Works.
- (b) analysing, verifying, or checking the Customer's credit, payment, and/or status.
- (c) processing any payment instructions or credit facilities; and
- (d) enabling the collection of outstanding amounts.

22.05 CPS may provide information about the Customer to a CRB for the purposes of:

- (a) obtaining a credit report; and
- (b) allowing the CRB to create or maintain a credit information file about the Customer.

22.06 Information provided to a CRB may include:

- (a) personal information outlined in clause 22.01.
- (b) the identity of CPS as a credit provider.
- (c) details of the Customer's credit application or account (including commencement and termination dates and amounts);
- (d) information about overdue payments, defaults, or repayments.
- (e) information that CPS reasonably believes the Customer has committed a serious credit infringement; and
- (f) any other information permitted to be disclosed under the Privacy Act 1988 (Cth).

22.07 The Customer has the right to request from CPS:

- (a) access to personal information held by CPS about the Customer and request correction of any inaccurate information; and
- (b) that CPS does not use or disclose personal information for direct marketing purposes.

22.08 The Customer may make a complaint regarding the handling of personal information by contacting CPS. CPS will respond within a reasonable time and will take reasonable steps to resolve the complaint. If the Customer is not satisfied with the outcome, the Customer may lodge a complaint with the **Office of the Australian Information Commissioner (OAIC)**.

23 Unpaid Seller's Rights:

23.01 Where the Customer has left any item with CPS for repair, modification, exchange, or for CPS to perform any other service, and CPS has not received payment in full of all monies owing, CPS shall, until such payment is made:

- (a) have a lien over the item; and
- (b) be entitled to retain possession of the item and, if payment remains outstanding after reasonable notice, to sell or dispose of the item in accordance with any applicable legislation relating to uncollected goods; and
- (c) CPS may apply the proceeds of any sale towards the amount owing, including any costs of storage, sale, or disposal, with any surplus returned to the Customer.

23.02 The lien of CPS shall continue notwithstanding the commencement of proceedings or the obtaining of judgment for any monies owing to CPS by the Customer.

24 Service of Notices:

24.01 Any notice required or permitted to be given under these terms and conditions must be in writing and will be deemed to have been duly given and received:

- (a) if delivered by hand, at the time of delivery.
- (b) if left at the recipient's address, at the time it is left at that address.

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- (c) if sent by registered post, on the third (3rd) business day after posting.
- (d) if sent by email, at the time the email is sent, unless the sender receives an automated message indicating that the email has not been delivered.
- (e) if an email is sent after 3:30pm on a business day or on a non-business day, it is deemed to have been received on the next business day.

24.02 The address or email address for service of notices shall be the address or email address last notified by the receiving party to the sending party.

25 Dispute Resolution:

25.01 If a dispute arises between the parties in connection with these terms and conditions, either party may give the other a written notice of dispute setting out details of the dispute.

Within fourteen (14) days after service of the notice, the parties must confer in good faith to attempt to resolve the dispute. Each party must be represented by a person with authority to settle the dispute.

25.02 If the dispute is not resolved within fourteen (14) days of the conference, either party may refer the dispute to arbitration by written notice.

Any arbitration shall be:

(a) conducted by a single arbitrator appointed by the President of the Resolution Institute (or its successor); and

(b) conducted in accordance with the Resolution Institute Arbitration Rules.

25.03 Notwithstanding the existence of a dispute, the parties must continue to perform their obligations under these terms and conditions, including the Customer's obligation to make payment for any undisputed amounts.

26 Building Industry Fairness (Security of Payment) Act 2017 (Qld):

26.01 The parties acknowledge that the *Building Industry Fairness (Security of Payment) Act 2017 (Qld)* (the "Act") may apply to the Works, including any construction work and/or related goods and services supplied under this agreement.

26.02 Nothing in this agreement is intended to exclude, modify, or restrict the operation of the Act, except to the extent permitted by the Act.

26.03 The Customer acknowledges that CPS may exercise its rights under the Act, including the right to make a payment claim or seek adjudication.

27 General:

27.01 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 is held to be invalid, void, illegal, or unenforceable, the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.

27.02 These terms and conditions, and any contract to which they apply, shall be governed by the laws of Queensland, and the parties submit to the jurisdiction of the courts of Queensland.

27.03 Subject to clause 18 and to the extent permitted by law, CPS shall not be liable to the Customer for any indirect or consequential loss or damage (including loss of profit) arising out of a breach of these terms and conditions. CPS' liability shall, in any event, be limited to the Price of the Works.

27.04 Neither party may assign this contract or any rights or obligations under it without the prior written consent of the other party (which shall not be unreasonably withheld). CPS may subcontract any part of the Works but shall remain responsible for the performance of the Works. The Customer must not give instructions directly to CPS's subcontractors without CPS's prior approval.

27.05 CPS may amend these terms and conditions by providing written notice to the Customer. Any amended terms will apply from the date the Customer accepts them or from the date the Customer makes a further request for CPS to provide Works.

27.06 Neither party shall be liable for any failure or delay in performing its obligations where such failure or delay is due to events beyond its reasonable control, including (but not limited to) acts of God, war, terrorism, industrial action, fire, flood, or storm.

27.07 Each party warrants that it has the power to enter into this agreement and that this agreement constitutes binding and enforceable obligations.

27.08 This agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, or agreements.

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