

TERMS AND CONDITIONS FOR SALE OF MINOR WORKS

1. Quotation

- (a) The Quotation will lapse at the end of the validity period specified in the Quotation.
- (b) Prior to the Client's acceptance of the Quotation under clause 2 below, Fleetwood may withdraw the Quotation at any time.

2. Acceptance of Terms

The parties acknowledge and agree that by the:

- (a) Client executing the Quotation; or
- (b) Client issuing a purchase order for the Works; or
- (c) Fleetwood commencing the performance of the Works, upon direction from the Client,

the parties accept these Terms and Conditions as the sole basis for Fleetwood to undertake the Works, to the exclusion of any other terms or conditions of purchase in any document (including the Client's purchase order) or prior agreements.

3. Title and Risk

- (a) Where Fleetwood is required to:
 - (i) supply the Goods without delivery, the risk in the Goods will pass when the Client takes possession of the Goods or part of the Goods. If Fleetwood is responsible for loading the Goods, or part of the Goods, risk will pass to the Client when the Goods (or part thereof) have been loaded and secured by Fleetwood onto the Client's transportation vehicle;
 - (ii) supply and deliver the Goods, with no installation work, the risk in the Goods will pass to the Client upon delivery of the Goods to the Delivery Point. The Client shall be responsible and bare the risk of unloading the Goods at the Delivery Point; or
 - (iii) supply the Goods and perform installation works, risk will pass to the Client at 4pm on the Date of Completion.
- (b) Title to any part of the Works and the Goods comprised in the Works will pass to the Client upon full payment of the Contract Sum and all other monies payable by the Client to Fleetwood.

4. Programming and Completion

- (a) Any advice given by Fleetwood, whether verbal or in writing, as to the Commencement Date, Completion Date or program for the Works is made in good faith based on Fleetwood's commitments and the availability of resources at such time.
- (b) The parties expressly agree and acknowledge that prior to commencement of the Works, Fleetwood reserves the right to revise the Commencement Date and Completion Date for the Works.
- (c) If the Client directs a reasonable change to the program for the performance of the Works, Fleetwood may comply with such direction. Fleetwood shall advise the Client of the cost and time implications of the direction and the Client shall pay all of Fleetwood's reasonable costs incurred in following such direction, including overhead recovery.
- (d) The Works will be deemed to have reached Completion if in the reasonable opinion of Fleetwood, they are complete and in accordance with the Scope of Work.
- (e) If Fleetwood is delayed in achieving Completion of the Works. Fleetwood shall undertake reasonable steps to mitigate such delay and:
 - (i) for any reason beyond the control of Fleetwood, the Completion Date will be deemed extended for the period of delay; and
 - (ii) for any reason other than its act or omission, Fleetwood shall be entitled to be paid all reasonable costs of delay, including overhead recovery, and be entitled to charge reasonable storage and associated costs, where applicable.

5. Variations

- (a) Fleetwood will only perform any variation to the Works, upon the parties reaching written agreement to the price of the variation (inclusive of a margin of at least 15% of the variation cost) and a reasonable extension or reduction of time to the Completion Date.
- (b) The agreed price of the variation under clause 5(a) above, will be added to or deducted from the Contract Sum.

6. Insurance

- (a) If Fleetwood is required to:
 - (i) supply the Goods without delivery, the Client will (at its own cost) be responsible for arranging its own insurances for the Goods, excluding Fleetwood's manufacturing Works; or
 - (ii) supply and deliver the Goods with no installation works, Fleetwood's liability to insure the Goods will cease immediately upon delivery of the Goods to the Delivery Point; or
 - (iii) supply the Goods and perform installation works, Fleetwood will take out insurance cover for the Works up to Completion.
- (b) The Client must ensure that it has its own public liability insurance for legal liabilities to third parties for bodily injury and/or property damage, in connection with any work carried out by the Client and its Personnel in relation to the Contract.
- (c) The Client will indemnify Fleetwood, its Personnel, successors and its permitted assigns and will keep them indemnified and forever held harmless against all losses, damages, claims and awards of any kind which may be imposed upon or awarded against either Fleetwood, its Personnel, successors and/or its permitted assigns arising either directly or indirectly out of the Goods or Services.

7. Payments to Fleetwood

- (a) For Fleetwood's performance of the Works, the Client must pay the Contract Sum, plus any adjustments pursuant to the Contract.
- (b) The Client shall pay any deposit as required and on the terms specified in the Quotation.
- (c) Where:
 - (i) Milestone Payments are specified in the Quotation, Fleetwood shall issue a payment claim and tax invoice at the end of the month during which the applicable Milestone Event was achieved; and
 - (ii) Monthly Progress Payments are provided for in the Quotation, Fleetwood shall issue a payment claim and tax invoice at the end of each month during the period in which the Works are performed.
- (d) The Client must pay to Fleetwood the amount shown on the tax invoice within 28 days of the date of the tax invoice. Fleetwood reserves the right to stop Works if the Client fails to pay Fleetwood in accordance with the Contract.
- (e) Interest is payable by the Client at the Interest Rate, accrued daily on any amounts due and unpaid to Fleetwood.

8. Testing, Inspections and Reports

The Client will bear the cost of all tests, inspections and reports relating to the Works and Site (where necessary), unless otherwise agreed.

9. Site Access and Conditions

- (a) If the Works involve installation work by Fleetwood, the Client will give Fleetwood uninterrupted access to the Site, or the relevant part of the Site, as required under the Contract.
- (b) Unless otherwise agreed in writing, the Client shall:

- (i) assume all responsibility for all Site conditions above and beyond the surface, including all environmental matters as may apply to the Site; and
- (ii) have obtained all necessary approvals, undertaken all due inspections, made all enquiries and warrant that the Works are capable of being performed on the Site.

10. Defects Liability Period & Warranty

- (a) During the 12-month period following the Date of Completion, Fleetwood shall, at its option, repair, replace, refund or otherwise make good any Defects in the Goods and/or Services. The Client must notify Fleetwood of any Defect in writing within 14 days of the Defect becoming known to the Client.
- (b) Fleetwood will not be liable for or offer warranty for Third-Party Supplied Items. Upon completion, Fleetwood shall pass to the Client the manufacturer's warranty for Third-Party Supplied Items.
- (c) If the Client provides documents or design information, including working drawings, briefs and other design documentation, for the manufacture of the Goods, the Client warrants:
 - (i) the accuracy and completeness of any such documents;
 - (ii) the design for the Goods is suitable for its intended use and installation;
 - (iii) the documents comply with all applicable Laws; and
 - (iv) it is entitled to use those documents and indemnifies Fleetwood from any claims that may be brought against Fleetwood about it.

11. Termination

- (a) The Contract may be terminated by written agreement between the parties.
- (b) If the Client breaches any provision of the Contract or suffers an Insolvency Event, Fleetwood (acting reasonably) may suspend or terminate the Works, and the Client shall be liable for:
 - (i) the cost of the Works performed up to and including the date of the suspension or termination; and
 - (ii) any reasonable costs incurred by Fleetwood, including overhead recovery, as a result of the suspension or termination of the Works.
- (c) Fleetwood may set off any amounts owed by the Client to Fleetwood, against any amounts due and payable by Fleetwood to the Client.

12. Dispute Resolution

- (a) If a dispute or difference arises between the parties, the parties must meet within 28 days to discuss it in good faith, with a view to resolving the same (**Dispute Meeting**). If the dispute or difference is not resolved at or following the Dispute Meeting, the dispute may be referred to litigation.
- (b) During any dispute, the parties must continue to perform all of their obligations under the Contract.
- (c) Nothing in this clause 12 will prejudice a party from seeking injunctive or declaratory relief of any matter under the Contract.

13. Confidential Information and Intellectual Property Rights

- (a) The Client shall not disclose any documents provided by Fleetwood marked, or which are to be treated, as confidential to any third-party without Fleetwood's consent.
- (b) Fleetwood retains all copyright and intellectual property rights whatsoever in all material it uses or provides to the Client relating to the performance of the Works.

14. Limitation of Liability

- (a) Fleetwood's total liability to the Client for all claims arising out of or in connection with the Contract is limited to the Contract Sum.

- (b) Neither party will be liable to the other party for any Indirect Loss suffered or incurred by the other party in connection with the Contract.

15. Health, Safety and Environment

- (a) The parties must comply and ensure that its Personnel comply with relevant Work Health and Safety Requirements.
- (b) Where applicable, the Client and its Personnel must comply with its obligations and do all things necessary to assist Fleetwood to comply with its obligations under the HVNL and Fleetwood's transport related policies. The Client must provide evidence of compliance upon request by Fleetwood.

16. Notices

Notice is deemed given if sent by email on the next Business Day after being sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

17. Assignment, Novation and Other Dealings

Without Fleetwood's prior written consent, the Client must not:

- (a) assign or novate this Contract or otherwise deal with the benefit of it or a right under it, or purport to do so; or
- (b) subcontract any part of the performance of the Contract.

18. Relationship of the Parties

At all times, Fleetwood is an independent contractor and will not act as, or be regarded as, or be entitled to any benefits as an agent or employee of the Client.

19. Waiver

A party's failure or delay in exercising a power or right does not operate as a waiver of the power or right. A waiver is not effective unless in writing.

20. Severability

If anything in this Contract is void or otherwise unenforceable then it will be severed and the rest of the Contract remains in force.

21. Entire Agreement

This Contract supersedes all previous agreements or statements and embodies the entire agreement between the parties, in respect of its subject matter.

22. Taxes

- (a) All amounts referred to in this Contract are exclusive of GST unless otherwise specified. Where any taxable supply occurs in connection with this Contract, Fleetwood may increase the amount payable for the Goods and/or Services by the amount of the applicable GST upon receipt of a tax invoice that complies with the GST Legislation.
- (b) Any reference to a calculation of any amount incurred by a party must exclude the amount of any input tax credit entitlement of that party in relation to the relevant amount. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the amount must be paid.
- (c) Terms used in this clause 22 that are not defined in this Contract have the meaning given to them in the GST Legislation.

23. Governing Law

The Contract is governed by the Laws of the jurisdiction in which the Works are performed and each party irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction there.

24. Definitions and Interpretation

24.1. Definitions

In the Contract the following terms have the meanings set out below.

Business Day means a day other than a Saturday or a Sunday or a public holiday in the jurisdiction in which the Works are performed.

Client means the entity specified as 'Client' in the Quotation.

Commencement Date means the date set out in the Quotation or as revised by Fleetwood in accordance with the Contract.

Completion means the completion of the Works in accordance with the Contract, except for minor Defects that do not prevent the Works from being reasonably capable of being used for the purposes contemplated in the Contract.

Completion Date means the date(s) specified in the Quotation or as may be extended in accordance with the Contract, by which Fleetwood must supply the Goods and / or perform the Services.

Contract means the Quotation, these Terms and Conditions, the Scope of Work and excludes any other document not expressly set out in the Quotation.

Contract Sum means the aggregate amount payable (excluding GST) by the Client to Fleetwood as set out in the Quotation, which is inclusive of any applicable Taxes.

Date of Completion means the date(s) that the Works achieve Completion.

Defect means any defect, flaw, deficiency or omission in the Works or any part of them that does not comply with the Contract.

Delivery Point means the place identified in the Quotation for delivery of the Goods.

Deposit means the deposit specified in the Quotation.

Dispute Meeting means a Dispute Meeting as referred to in clause 12(a).

Fleetwood means the Fleetwood entity specified in the Quotation.

Goods means the goods, materials, supplies, equipment or other items to be supplied by Fleetwood, specified in the Quotation and as varied, in accordance with the Contract.

Government Agency means a government or a governmental, semi governmental or judicial entity or authority. It also includes a self regulatory organisation established under statute or a stock exchange.

GST means any goods and services or similar tax, together with any related interest, penalties, fines or other charge.

GST Legislation means the A New Tax System (Goods and Services Tax) Act 1999 (Cth), including any related legislation that is enacted to impose, validate, recapture or recoup such tax.

HVNL means all heavy vehicle related national Laws; codes of practice; Australian standards or compliance codes; and directions or notices issued by any relevant Governmental Agency, that are relevant and applicable to any part of the Work under the Contract.

Indirect Loss means:

- (a) loss of profit, loss of revenue, loss of opportunity, damage to goodwill or reputation, loss of access to markets, loss of anticipated savings, business interruption, damage to credit rating, in each case whether direct, indirect, or consequential, and whether or not foreseeable at the Commencement Date; and
- (b) indirect or consequential damages, costs, losses or expenses of whatever nature; whether the losses described in paragraphs (a) and (b) arise in contract, tort, including negligence or otherwise.

Interest Rate means a rate of interest per annum equal to 2% above the Reserve Bank of Australia cash target rate current as at the date that the payment was due.

Insolvency Event means any of the following events:

- (a) a party becoming subject to bankruptcy, liquidation or winding up procedures or otherwise becoming insolvent (other than for the purpose of a solvent restructuring or amalgamation); or
- (b) a receiver, receiver/manager, administrator or voluntary administrator is appointed to a party, or a mortgagee takes possession of all or a substantial part of its assets or the party is placed under official management.

Law means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, rule or subordinate legislation.

Milestone Event means (if applicable) the milestone events set out in the Quotation.

Milestone Payments means (if applicable) the milestone payments payable upon the achievement of the Milestone Events.

Monthly Progress Payments means (if applicable) the monthly progress payments set out in the Quotation.

Payment Claim means a payment claim issued under 7(c) above.

Personnel means, in relation to a party:

- (a) any of its directors, officers, employees, subcontractors (including subcontractors' personnel), agents and representatives; and
- (b) each Related Body Corporate of the party (and the directors, officers, employees, subcontractors, agents and representatives of each Related Body Corporate).

Quotation means the quotation provided by Fleetwood and accepted by the Client, for the Works. The Quotation, by reference, incorporates these Terms and Conditions.

Related Body Corporate has the meaning given to related body corporate in the Corporations Act 2001 (Cth).

Scope of Work means the scope of work set out in the Quotation.

Services means the services specified in the Quotation to be performed by Fleetwood and as varied, in accordance with the Contract.

Site means the land and other places to be made available and any other lands and places made available to Fleetwood by the Client for the purpose of the Contract, as specified in the Quotation.

Taxes means any tax, levy, impost, charge or duty, other than a tax on the Client's net income, which is imposed by a Government Agency authorised to impose it, and any related interest, penalty, charge, fee or other amount.

Terms and Conditions means this document, titled Terms and Conditions for Sale of Minor Works.

Third-Party Supplied Items means goods which form part of the Works, but which have not been manufactured by Fleetwood.

Work Health and Safety Requirements means any and all directions, instructions, requests or requirements relevant to or associated with or necessary for compliance by the parties with all workplace, health, safety and environment related Laws; codes of practice; Australian standards or compliance codes; and directions or notices issued by any relevant Governmental Agency, that are binding on and applicable to the parties, the Works or the Site by operation of Law.

Works means (as the case may be):

- (a) the manufacture and supply of the Goods; and
 - (b) (if applicable) the delivery of the Goods; and
 - (c) (if applicable) the performance of the Services and all services to be carried out and performed by Fleetwood,
- in accordance with the Contract.

24.2. Interpretation

In the Contract, unless the context requires otherwise:

- (a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- (b) the time for doing any act or thing under the Contract will, if it ends on a Saturday, Sunday or statutory or public holiday, be deemed to end on the day next following which is not a Saturday, Sunday or statutory or public holiday;
- (c) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context;
- (d) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing; and
- (e) the Contract is not to be interpreted against the interest of a party merely because that party proposed the Contract or some provision in it or because that party relies on a provision of the Contract to protect itself.