

Demolition Plus Contracting Pty Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 "Company" shall mean Demolition Plus Contracting Pty Limited its successors and assigns or any person acting on behalf of and with the authority of Demolition Plus Contracting Pty Limited.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Company to the Client.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Works" shall mean all Works undertaken by the Company for the Client and includes any advice or recommendations.
- 1.5 "Price" shall mean the price payable for the Works as agreed between the Company and the Client in accordance with clause 3 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Company from the Client for the supply of Works and/or the Client's acceptance of Works supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Company.
- 2.3 The Client shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Company as a result of the Client's failure to comply with this clause.
- 2.4 Works are supplied by the Company only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

3. Price And Payment

- 3.1 At the Company's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Company to the Client in respect of Works undertaken by the Company; or
 - (b) the Company's quoted Price (subject to clause 3.2) which shall be binding upon the Company provided that the Client shall accept the Company's quotation in writing within thirty (30) days.
- 3.2 The Company reserves the right to change the Price in the event of a variation to the Company's quotation. Any variation from the plan of scheduled Works or specifications will be charged for on the basis of the Company's quotation and will be shown as variations on the invoice. The Company shall not proceed with any variations without first obtaining the Client's written authorisation. Payment for all variations must be made in accordance with the payment terms specified on the Company's invoice.
- 3.3 At the Company's sole discretion:
 - (a) payment for approved Clients shall be made by instalments in accordance with the Company's payment schedule; or
 - (b) payment for approved Clients shall be due thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices.
- 3.4 Time for payment for the Works shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due on completion of the Works.
- 3.5 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 3.6 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership or rights in respect of the Works shall continue.

4. Delivery

- 4.1 At the Company's sole discretion delivery of the Works shall take place when the Client takes possession of the Works at the Client's nominated address.
- 4.2 At the Company's sole discretion the costs of Delivery are:
 - (a) included in the Price; or
 - (b) in addition to the Price; or
 - (c) for the Client's account.
- 4.3 The Client shall make all arrangements necessary to take delivery of the Works whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Works as arranged then the Company shall be entitled to charge a reasonable fee for a cancelled delivery or redelivery.
- 4.4 The Company may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.5 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- 4.6 The Company shall not be liable for any loss or damage whatsoever due to failure by the Company to deliver the Works (or any of them) promptly or at all where due to circumstances beyond the control of the Company.

5. Risk

- 5.1 If any of the surrounding areas, structures, items or services that are to remain unharmed are damaged or destroyed prior to completion of the works, the Company is entitled to receive all insurance proceeds payable. This shall apply whether or not the Price has become payable under this agreement. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
- 5.2 The Client acknowledges that once the site is handed over to the Company that:
 - (a) they shall have no claim whatsoever to any materials remaining at the worksite unless specifically agreed in writing; and
 - (b) that unless such an agreement is in place the Company shall not be liable to compensate the Client for any materials left at the worksite.
- 5.3 Finished levels and contours of the site are limited to natural levels and are not to site plan or earth work specifications.
- 5.4 Whilst every care is taken to prevent any damage to the Client's property and the property of any third party/s, no liability is accepted for any damage that may occur whilst undertaking works under the instruction of the Client or the Client's agent.
- 5.5 Whilst care is taken when trees and buildings are removed, no liability is accepted for any damage to fences, services and/or neighbouring properties.
- 5.6 The Company shall not be liable for any loss or damage caused in accessing the site beyond reasonable control of the Company (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas).

6. On Site Works

- 6.1 Prior to the Company commencing any work the Client must advise the Company in writing of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 6.2 Whilst the Company will take all care to avoid damage to any underground services the Client agrees to indemnify the Company in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 6.

7. Asbestos/Hazardous Materials

- 7.1 Prior to the Company commencing any Works, the Client must advise the Company of the precise location of all known Asbestos/Hazardous Materials on the site and clearly mark the same. Removal from the site and the disposal of Asbestos/Hazardous Materials shall at all times be the Client's responsibility unless otherwise agreed in writing.
- 7.2 In the event that the Company discovers Asbestos/Hazardous materials whilst undertaking any works the Company shall immediately advise the Client of the same and shall be entitled to suspend the works pending a risk assessment in relation to those materials. The Client shall be liable for all additional costs (howsoever arising) incurred by the Company as a result of the discovery of Asbestos/Hazardous Materials and/or any suspension of works in relation thereto.
- 7.3 Where the Company agrees to remove any Asbestos/Hazardous Materials on the Client's behalf then the Client shall be liable for all costs incurred by the Company in the removal and disposal those materials.
- 7.4 Both the Client and the Company agree that they will at all times ensure that they comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works, including occupational health and safety laws relating to building/construction sites, and any other relevant safety standards or legislation, particularly those in relation to Asbestos/Hazardous Materials and the safe removal and disposal of the same.

8. Errors and Omissions

- 8.1 The Client shall inspect the premises on completion and shall within forty eight (48) hours of completion (time being of the essence) notify the Company of any alleged defect, errors, omissions or failure to comply with the agreed works to be undertaken or quote. The Client shall afford the Company an opportunity to inspect the works within a reasonable time following delivery if the Client believes the works are defective in any way. If the Client shall fail to comply with these provisions, the works shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 8.2 For defective Works, which the Company has agreed in writing that the Client is entitled to reject, the Company's liability is limited to (at the Company's discretion) rectifying the Works, except where the

Client has acquired Works as a consumer within the meaning of the Trade Practices Act 1974 (Cwlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the agreed cost of the particular part of the works, or rectification of the Works.

9. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")

- 9.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

10. Client's Disclaimer

- 10.1 The Client hereby disclaims any right to rescind, or cancel the contract with the Company or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by the Company and the Client acknowledges that the Works are bought relying solely upon the Client's skill and judgment.

11. Default & Consequences of Default

- 11.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 11.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Company.
- 11.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.
- 11.4 Without prejudice to any other remedies the Company may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Works to the Client and any of its other obligations under the terms and conditions. The Company will not be liable to the Client for any loss or damage the Client suffers because the Company has exercised its rights under this clause.
- 11.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 11.6 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to the Company becomes overdue, or in the Company's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

12. Security And Charge

- 12.1 Despite anything to the contrary contained herein or any other rights which the Company may have howsoever:
 - (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Company or the Company's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.

13. Cancellation

- 13.1 The Company may cancel any contract to which these terms and conditions apply or cancel the supply of Works at any time before the Works are due to commence. On giving such notice the Company shall repay to the Client any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.2 In the event that the Client cancels delivery of Works the Client shall be liable for any loss incurred by the Company (including, but not limited to, any loss of future earnings) up to the time of cancellation.

14. Privacy Act 1988

- 14.1 The Client and/or the Guarantor/s agree for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Company.
- 14.2 The Client and/or the Guarantor/s agree that the Company may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 14.3 The Client consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 14.4 The Client agrees that personal credit information provided may be used and retained by the Company for the following purposes and for other purposes as shall be agreed between the Client and Company or required by law from time to time:
 - (a) provision of Works; and/or
 - (b) marketing of Works by the Company, its agents or distributors in relation to the Works; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Works; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Works.
- 14.5 The Company may give information about the Client to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Client; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

15. Building and Construction Industry Security of Payments Act 1999

- 15.1 At the Company's sole discretion, if there are any disputes or claims for unpaid Goods and/or Works then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 15.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

16. General

- 16.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 16.3 The Company shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Company of these terms and conditions.
- 16.4 In the event of any breach of this contract by the Company the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Works.
- 16.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.6 The Company may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.7 The Company reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Client of such change.
- 16.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 16.9 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision.