

**1. Definitions**

- 1.1 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting G C Smith to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Client is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
  - (d) includes the Client's executors, administrators, successors, and permitted assigns.
- 1.2 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, Contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.3 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when using G C Smith's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.4 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.5 **"G C Smith"** means Zuvela Stone Pty Ltd T/A GC Smith & Co, its successors and assigns or any person acting on behalf of and with the authority of Zuvela Stone Pty Ltd T/A GC Smith & Co.
- 1.6 **"Goods"** means all Goods or Services supplied by G C Smith to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.7 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.8 **"Price"** means the Price payable for the Goods as agreed between G C Smith and the Client in accordance with clause 5 below.
- 1.9 **"Worksite"** means the address nominated by the Client to which the Goods are to be supplied by GC Smith.

**2. Acceptance**

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges and accepts that:
- (a) the supply of Goods on credit shall not take effect until the Client has completed a credit application with G C Smith and it has been approved with a credit limit established for the account;
  - (b) in the event that the supply of Goods requested exceeds the Client's credit limit and/or the account exceeds the payment terms, G C Smith reserves the right to refuse delivery; and
  - (c) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, G C Smith reserves the right to vary the Price with alternative Goods as per clause 5.2, subject to prior confirmation and agreement of both parties. G C Smith also reserves the right to halt all Services until such time as G C Smith and the Client agree to such changes. G C Smith shall not be liable to the Client for any loss or damage the Client suffers due to G C Smith exercising its rights under this clause.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2011 or any other applicable provisions of that Act or any Regulations referred to in that Act.

**3. Errors and Omissions**

- 3.1 The Client acknowledges and accepts that G C Smith shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by G C Smith in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by G C Smith in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of G C Smith; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 3.3 In circumstances where the Client is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not) ("**Client Error**"). The Client must pay for all Goods it orders from G C Smith notwithstanding that such Goods suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take Delivery of such Goods. G C Smith is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

**4. Change in Control**

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

**5. Price and Payment**

- 5.1 At G C Smith's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by G C Smith to the Client; or

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- (b) G C Smith's quoted Price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 G C Smith reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) in the event of increases to G C Smith in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight, levies, taxes, or insurance and/or toll charges, shipment delays etc), which are beyond G C Smith's control.
- 5.3 Variations will be charged for on the basis of G C Smith's quotation, and will be detailed in writing, and shown as variations on G C Smith's invoice. The Client shall be required to respond to any variation submitted by G C Smith within ten (10) working days. Failure to do so will entitle G C Smith to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At G C Smith's sole discretion, a fifty percent (50%) non-refundable deposit may be required.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by G C Smith, which may be:
- (a) on delivery of the Goods;
  - (b) on completion of the Services;
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by G C Smith.
- 5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking or by any other method as agreed to between the Client and G C Smith.
- 5.7 G C Smith may in its discretion allocate any payment received from the Client towards any invoice that G C Smith determines and may do so at the time of receipt or at any time afterwards. On any default by the Client G C Smith may re-allocate any payments previously received and allocated. In the absence of any payment allocation by G C Smith, payment will be deemed to be allocated in such manner as preserves the maximum value of G C Smith's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by G C Smith nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify G C Smith in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as G C Smith investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in G C Smith placing the Client's account into default and subject to default interest in accordance with clause 14.1.
- 5.9 Unless otherwise stated the Price are inclusive of GST.
- 6. Delivery of Goods**
- 6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at G C Smith's address; or
  - (b) G C Smith (or G C Smith's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 At G C Smith's sole discretion, the cost of Delivery is included in the Price.
- 6.3 The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery.
- 6.4 Any time specified by G C Smith for Delivery of the Goods is an estimate only and G C Smith will not be liable for any loss or damage incurred by the Client because of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. If G C Smith is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then G C Smith shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.5 It is the Client's responsibility to ensure that G C Smith has clear and free access to the Worksite at all times to enable them to deliver and/or install the Goods. G C Smith shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of G C Smith.
- 7. Risk**
- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, G C Smith is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by G C Smith is sufficient evidence of G C Smith's rights to receive the insurance proceeds without the need for any person dealing with G C Smith to make further enquiries.
- 7.3 Granite and marble are based on natural products, have natural colour and shade tones, markings, and veining that may vary from colour samples provided. G C Smith gives no guarantee (expressed or implied) that colour samples will match the Goods supplied. G C Smith will make every effort to match colour samples to the Goods supplied but will not be liable in any way whatsoever for colour samples differing from the Goods supplied.
- 7.4 The Client acknowledges and accepts that Goods supplied may:
- (a) fade or change colour over time;
  - (b) expand, contract or distort as a result of exposure to heat, cold, weather;
  - (c) mark or stain if exposed to certain substances; and
  - (d) be damaged or disfigured by impact or scratching.
- 7.5 While every effort will be taken by G C Smith to match colour, shade or grain of the Goods, G C Smith shall not be liable for any loss, damages or costs howsoever arising resulting from any variation in colour, shading or grain between batches of product or sale samples and the final product supplied.
- 7.6 G C Smith gives no guarantee (expressed or implied) against crazing, cracking, chipping or scratching that may occur that is beyond G C Smith's control due to the nature of the product at the time of installation.

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- 7.7 In the event that the Client's property experiences any movement which in turns causes cracks to the Goods supplied, the Client acknowledges and accepts that if the Client requests G C Smith to rectify such damage that G C Smith reserves the right shall charge the Client for additional Services in accordance with clause 5.2.
- 8. Compliance with Laws**
- 8.1 The Client and G C Smith shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods/Services (including, but not limited to, any applicable laws relating to the Cemeteries Act 1986 etc).
- Modern Slavery*
- 8.2 For the purposes of clauses 8.2 to 8.7:
- (a) **"Act"** means the *Modern Slavery Act 2018 (cth)*
- (b) **"Modern Slavery"**, **"Modern Slavery Statement"** and **"Reporting Entity"** have the meanings given by the Act.
- 8.3 If the Client is a Reporting Entity, it shall comply with all of its obligations under the Act.
- 8.4 Whether the Client is a Reporting Entity or not, the Client shall:
- (a) use reasonable endeavours to identify, assess and address risks of Modern Slavery practices in its operations and supply chains;
- (b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;
- (c) use its reasonable endeavours to ensure that if at any time the Client becomes aware of Modern Slavery practices in its operations and supply chains, the Client must as soon as reasonably practicable take all reasonable steps to address or remove these practices;
- (d) provide to G C Smith a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and
- (e) within seven (7) days of G C Smith's request (or such longer period as G C Smith agrees), provide to G C Smith any information or assistance reasonable requested by G C Smith;
- (i) concerning the Client's compliance with the Act;
- (ii) concerning the Client's operations and supply chains;
- (iii) to enable G C Smith to prepare a Modern Slavery Statement or otherwise comply with the Act; or
- (iv) to enable G C Smith to assess and address risks of Modern Slavery practices in its operations and supply chains.
- 8.5 The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and G C Smith will be able to terminate the Contract for any breach by the Client.
- 8.6 The Client warrants that any information supplied to G C Smith is true and accurate and may be relied upon for the purposes of the Act.
- 8.7 The Client shall indemnify G C Smith against any loss or liability suffered by G C Smith as a result of the Client's breach of this clause 8.
- 9. Title**
- 9.1 G C Smith and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid G C Smith all amounts owing to G C Smith; and
- (b) the Client has met all of its other obligations to G C Smith.
- 9.2 Receipt by G C Smith 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.
- 9.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 9.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to G C Smith on request;
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for G C Smith and must pay to G C Smith the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for G C Smith and must pay or deliver the proceeds to G C Smith on demand;
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of G C Smith and must sell, dispose of or return the resulting product to G C Smith as it so directs;
- (e) the Client irrevocably authorises G C Smith to enter any premises where G C Smith believes the Goods are kept and recover possession of the Goods;
- (f) G C Smith may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of G C Smith;
- (h) G C Smith may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 10. Personal Property Securities Act 2009 ("PPSA")**
- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by G C Smith to the Client, and the proceeds from such Goods.
- 10.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which G C Smith may reasonably require to;
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or

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- (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, G C Smith for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of G C Smith;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of G C Smith;
  - (e) immediately advise G C Smith of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales.
- 10.4 G C Smith and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by G C Smith, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Client must unconditionally ratify any actions taken by G C Smith under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary (including those contained in this clause 10), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 11. Security and Charge

- 11.1 In consideration of G C Smith agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property for the purposes of, including but not limited to registering G C Smith's security interest over the Client on the PPSA, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Client indemnifies G C Smith from and against all G C Smith's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising G C Smith's rights under this clause.
- 11.3 The Client irrevocably appoints G C Smith and each director of G C Smith as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

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

- 12.1 The Client must inspect the Goods on Delivery and must within seven (7) days of Delivery notify G C Smith in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow G C Smith to inspect the Goods.
- 12.2 Further to clause 12.1 and subject to the conditions of warranty set out in clause 12.10 G C Smith warrants that if any defect in any Services provided by G C Smith becomes apparent and is reported to G C Smith within five (5) years of the date of Delivery (time being of the essence) and upon receiving such notification the Client must allow G C Smith to inspect the Goods. G C Smith will then either (at G C Smith's sole discretion) replace or remedy the defect.
- 12.3 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 12.4 G C Smith acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.5 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, G C Smith makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. G C Smith's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.6 If the Client is a consumer within the meaning of the CCA, G C Smith's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.7 If G C Smith is required to replace the Goods under this clause or the CCA, but is unable to do so, G C Smith may refund any money the Client has paid for the Goods.
- 12.8 If the Client is not a consumer within the meaning of the CCA, G C Smith's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by G C Smith at G C Smith's sole discretion;
  - (b) limited to any warranty to which G C Smith is entitled, if G C Smith did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 12.9 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 12.1; and
  - (b) G C Smith has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 12.10 Notwithstanding clauses 12.1 to 12.9 but subject to the CCA, G C Smith shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain the Goods;
  - (b) the Client using the Goods for any purpose other than that for which they were designed;
  - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Client failing to follow any instructions or guidelines provided by G C Smith;
  - (e) fair wear and tear, any accident, or act of God.

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- 12.11 Notwithstanding anything contained in this clause if G C Smith is required by a law to accept a return, then G C Smith will only accept a return on the conditions imposed by that law.
- 12.12 Subject to clause 12.1, customised, or non-stocklist items or Goods made or ordered to the Client's specifications are not acceptable for credit or return.

### 13. Intellectual Property

- 13.1 Where G C Smith has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of G C Smith. Under no circumstances may such designs, drawings and documents be used without the express written approval of G C Smith.
- 13.2 The Client warrants that all designs, specifications, or instructions given to G C Smith will not cause G C Smith to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify G C Smith against any action taken by a third party against G C Smith in respect of any such infringement.
- 13.3 The Client agrees that G C Smith may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, photographs, drawings or Goods which G C Smith has created for the Client.

### 14. Default and Consequences of Default

- 14.1 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 G C Smith's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Client owes G C Smith any money, the Client shall indemnify G C Smith from and against all costs and disbursements:
- (a) incurred; and/or
  - (b) which would be incurred and/or
  - (c) for which by the Client would be liable;
- in regard to legal costs on a solicitor and own client basis, internal administration fees, G C Smith's Contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 14.3 Further to any other rights or remedies G C Smith may have under this Contract, if a Client has made payment to G C Smith, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by G C Smith under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 14.4 Without prejudice to G C Smith's other remedies at law G C Smith shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to G C Smith shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to G C Smith becomes overdue, or in G C Smith's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by G C Smith;
  - (c) 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
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### 15. Cancellation

- 15.1 Without prejudice to any other remedies G C Smith may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions G C Smith may suspend or terminate the supply of Goods to the Client. G C Smith will not be liable to the Client for any loss or damage the Client suffers because G C Smith has exercised its rights under this clause.
- 15.2 G C Smith may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice G C Smith shall repay to the Client any money paid by the Client for the Goods. G C Smith shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.3 In the event that Client cancels Delivery of Goods and the deposit has already been paid, the Client acknowledges and accepts that they shall be liable for all losses incurred (whether direct or indirect) by G C Smith as a direct result of the cancellation (including, but not limited to, any loss of profits) and a cancellation fee will apply as determined by G C Smith.
- 15.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

### 16. Privacy Policy

- 16.1 All emails, documents, images, or other recorded information held or used by G C Smith is Personal Information, as defined and referred to in clause 16.3, and therefore considered Confidential Information. G C Smith acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). G C Smith acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by G C Smith that may result in serious harm to the Client, G C Smith will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 16.2 Notwithstanding clause 16.1, privacy limitations will extend to G C Smith in respect of Cookies where the Client utilises G C Smith's website to make enquiries. G C Smith agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and

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- (c) reports are available to G C Smith when G C Smith sends an email to the Client, so G C Smith may collect and review that information (“collectively Personal Information”)
- If the Client consents to G C Smith’s use of Cookies on G C Smith’s website and later wishes to withdraw that consent, the Client may manage and control G C Smith’s privacy controls via the Client’s web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 16.3 The Client agrees that G C Smith may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client including the Client’s repayment history in the preceding two (2) years.
- 16.4 The Client consents to G C Smith being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 16.5 The Client agrees that personal credit information provided may be used and retained by G C Smith for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Client’s credit, payment and/or status in relation to the provision of Goods; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 16.6 G C Smith may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 16.7 The information given to the CRB may include:
- (a) Personal Information as outlined in 16.3 above;
  - (b) name of the credit provider and that G C Smith is a current credit provider to the Client;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Client’s application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults (provided G C Smith is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and G C Smith has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of G C Smith, the Client has committed a serious credit infringement;
  - (h) advice that the amount of the Client’s overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 16.8 The Client shall have the right to request (by e-mail) from G C Smith:
- (a) a copy of the Personal Information about the Client retained by G C Smith and the right to request that G C Smith correct any incorrect Personal Information; and
  - (b) that G C Smith does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 16.9 G C Smith will destroy Personal Information upon the Client’s request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 16.10 The Client can make a privacy complaint by contacting G C Smith via e-mail. G C Smith will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 17. Building and Construction Industry (Security of Payment) Act 2021**
- 17.1 At G C Smith’s sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry (Security of Payment) Act 2021 may apply.
- 17.2 Nothing in this Contract is intended to have the effect of contracting out of any provisions of the Building and Construction Industry (Security of Payment) Act 2021 of Western Australia, except to the extent permitted by the Act where applicable.
- 18. Service of Notices**
- 18.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party’s last known email address.
- 18.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 19. Trusts**
- 19.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust (“Trust”) then whether or not G C Smith may have notice of the Trust, the Client covenants with G C Smith as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;

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## GC Smith & Co – Terms & Conditions of Trade

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- (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Client will not without consent in writing of G C Smith (G C Smith will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
  - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
  - (ii) any alteration to or variation of the terms of the Trust;
  - (iii) any advancement or distribution of capital of the Trust; or
  - (iv) any resettlement of the trust property.

### 20. General

- 20.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 20.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.3 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Western Australia, in which G C Smith has its principal place of business and are subject to the jurisdiction of the courts in that state.
- 20.4 Subject to clause 12, G C Smith 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 G C Smith of these terms and conditions (alternatively G C Smith's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 20.5 G C Smith may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 20.6 The Client cannot licence or assign without the written approval of G C Smith.
- 20.7 G C Smith may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of G C Smith's sub-contractors without the authority of G C Smith.
- 20.8 The Client agrees that G C Smith may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for G C Smith to provide Goods to the Client.
- 20.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party.
- 20.10 Both parties warrant that they have the power to enter this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 20.11 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and Delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.