

1. Definitions

Agreement:	means the Quotation and these Terms of Trade which together comprise the entire and final agreement between the Contractor and Client.
Client:	means the party named as such in the Quotation.
Contractor:	means Grounded Construction Group Pty Ltd (ABN 69 166 112 429).
Goods:	means the products, materials, plant or equipment set out in the Quotation that are to be supplied by the Contractor for incorporation into the Works.
IP Rights:	means patents, patent applications, copyright, trademarks, designs, design rights, specifications, processes, methods of working, know-how, technical data, databases, formulae, inventions, improvements, logos, any right to have confidential information kept confidential, and similar industrial or intellectual property rights.
Personnel:	means any director, officer, agent, employee, contractor, related entity or other representative of the stated party(ies) in the particular instance.
Price:	means the rate(s) (multiplied by the applicable quantities) and/or lump sum(s) stated in the Quotation, as varied pursuant to this Agreement, that the Client must pay the Contractor in accordance with the Agreement in consideration of the Contractor performing the Works.
PPSA:	means the <i>Personal Property Securities Act 2009</i> (Cth).
Quotation:	means the Contractor's applicable quotation or tender submission that these Terms of Trade are attached to or referred to therein.
Remote Location:	means any Site that is located at least 150km outside of the Perth CBD.
Site:	means any location connected with the performance of the Works or the supply or storage of the Goods.
Terms of Trade:	means these terms of trade which have been attached to, or referred to within, the Quotation.
Works:	means the work set out in the Quotation that the Contractor must perform for the Client in accordance with this Agreement.

2. Interpretation

In this Agreement:

- 2.1. 'party' or 'parties' means respectively a party and the parties to this Agreement and includes the party's or parties' executives, administrators, successors and permitted assigns;
- 2.2. 'day' means a calendar day unless expressed otherwise with a business day excluding Saturdays, Sundays or public holidays recognised in WA;
- 2.3. a reference to the word "including" or similar expressions are not words of limitation;
- 2.4. a reference to a clause, subclause, schedule or annexure is a reference to a clause, subclause, schedule or annexure of this Agreement;
- 2.5. no rule of construction applies to the disadvantage of a party only because that party was responsible for the preparation of this Agreement or any part of it;
- 2.6. to the full extent permitted by law, each right, power, remedy or warranty given to the Contractor under any clause or subclause of this Agreement is in addition to any other right, power, remedy or warranty under this Agreement or at law, and, shall be exercised in the Contractor's absolute discretion;
- 2.7. This Agreement is governed by the laws of Western Australia and the parties submit to the exclusive jurisdiction of the courts of Western Australia;
- 2.8. references to any legislation, or to any section or provision of any legislation, includes any statutory modification or re-enactment or any statutory provision substituted for it, and any ordinances, by-laws, regulations and other statutory instruments issued under such legislation;
- 2.9. The parties acknowledge and warrant that they consider the terms of the Agreement to be reasonable to legitimately protect the interests of the parties;

- 2.10. No clause or subclause in the Agreement is intended to limit, exclude or modify those provisions set out in the *Australian Consumer Law* at Schedule 2 of the *Competition and Consumer Act 2010* (Cth) or state equivalent legislation that cannot be limited, excluded or modified; and
- 2.11. Should any clause or subclause of this Agreement be held as void, unlawful or otherwise unenforceable for any reason, then this Agreement shall be read and enforced as if such clause(s) or subclause(s) has/have been deleted.

3. The Agreement

- 3.1. The Client will be deemed to have accepted the Agreement upon performing any of its obligations, or instructing the Contractor to perform any of its obligations, under the Agreement, and any subsequent purchase order will have no contractual effect.
- 3.2. Subject to Clause 3.1, the issuing of a purchase order by the Client after its receipt of the Quotation shall be deemed to be acceptance of the Agreement with the purchase order's own terms (if any) being disregarded.
- 3.3. The applicable versions or revisions of any specifications or drawings that are to be used in determining the original scope and standard of Works shall be those used by the Contractor in preparing the Quotation.
- 3.4. Save for any 'Special Conditions' stated within the Quotation, these Terms of Trade shall prevail over any other terms or document forming the Agreement in the event of any inconsistency or conflict.
- 3.5. The Contractor may subcontract or assign all or any part of its rights or obligations under this Agreement without the Client's consent. The Client must not subcontract or assign any of its rights or obligations under this Agreement without the Contractor's consent.
- 3.6. The Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of the Agreement and supersedes any prior agreement, representation, promise or understanding of the same.

4. The Contractor's Warranties

The Contractor warrants to the Client that:

- 4.1. it will perform the Works with due care and skill and in accordance with the Agreement;
- 4.2. it will perform the Works in accordance with the Quotation; and
- 4.3. all Goods supplied to the Client will be of merchantable quality and free of any defects unless agreed otherwise.

5. The Client's Warranties

Unless expressed otherwise in this Agreement, the Client warrants to the Contractor that it:

- 5.1. Is, or has all necessary consents from, the registered proprietor of the site in which the Works will take place at;
- 5.2. is solely responsible for the design of the Works and selection of the Goods;
- 5.3. bears all risks and responsibilities in relation to the conditions on, below or above the ground at the Site (including but not limited to rock excavation and identifying and precisely marking out any underground services);
- 5.4. will provide clear, ready and uninterrupted access to the Site for the Contractor to perform the Works as anticipated by the Contractor;
- 5.5. is solely responsible for coordinating any other trades and its Personnel to ensure that the Contractor can perform the Works as anticipated by the Contractor;
- 5.6. will provide at its cost, all reasonably necessary services, amenities, water and site specific equipment for the Contractor's Personnel to perform the Works; and
- 5.7. will provide at its cost, where the Works are to be performed at a Remote Location, flights and transportation to, from and at the Remote Location in addition to accommodation, meals, training, inductions and other necessities specific to performing the Works at the Remote Location.

6. Security

- 6.1. The Contractor is entitled to be paid a non-refundable deposit of 20% of the Price, prior to commencing the Works.
- 6.2. Title in all Goods remains with the Contractor until the Contractor has been paid the Price in full. The Client grants the Contractor an irrevocable licence to enter any Site to seize any Goods should the Client default with respect to any of its payment obligations under this Agreement.
- 6.3. To the extent permitted by the *PPSA*, the Client waives its rights to be issued with any notices, statements or other documents it would otherwise be entitled to receive from the Contractor under the *PPSA*.
- 6.4. The Client must promptly perform all necessary acts and execute all forms, instruments, registrations or other documents as may be necessary to protect the Contractor's interests in the Goods under the *PPSA* or otherwise.
- 6.5. The Client undertakes to keep all Goods free of any security interest not expressly created by this Agreement and to not allow the Goods to be dealt with in a way that may prejudice the Contractor's interests in the Goods.

7. Payment

- 7.1. The Price is exclusive of GST unless expressed otherwise in this Agreement.
- 7.2. The Client agrees to pay the Contractor the Price by way of progress payments via electronic funds transfer.
- 7.3. The Contractor is entitled to issue one or more payment claims, in the form of a valid tax invoice, at any time upon performing the particular Work claimed within the payment claim.
- 7.4. The Contractor is entitled to claim for any unfixed or offsite Goods in a payment claim.
- 7.5. The provision of as-constructed drawings, manuals or other deliverables is not a precondition to payment for any portion of the Price.
- 7.6. If the Client disputes any amount claimed by the Contractor in a payment claim, it must issue a written notice of dispute in accordance with Clause 12.1 within 5 days of its receipt of the applicable payment claim.
- 7.7. The Client must pay any amount under a payment claim from the Contractor that is not disputed in accordance with Clause 7.6, in cleared funds and without set-off, within 28 days from its receipt of the Contractor's applicable payment claim.
- 7.8. Interest will be payable on overdue payment claims at the rate of 12% per annum for each day the payment claim is overdue.

8. Variations

- 8.1. The Contractor is able to rely on any oral or written instruction from any Personnel of the Client, as authority to perform and claim a variation to the Works and Price (whether or not such instruction is expressed to be a variation).
- 8.2. The Contractor is not obligated to carry out any variation to the Works unless its scope and value has been agreed in writing between the parties.
- 8.3. Unless the value for a variation has been agreed between the parties, for any variation the Contractor will be entitled to claim its actual costs plus 20% for overheads and profit.
- 8.4. The Client is prohibited from decreasing or omitting any part of the Works from the Contractor's scope to have that decreased or omitted Work performed by itself or a third party.
- 8.5. Any provisional sum is an estimate only and the Client relies solely on its own enquires in accepting any provisional sum. Where Work to which a provisional sum relates is carried out, that Work will be treated as a variation and priced accordingly.
- 8.6. The provision of as-constructed drawings, manuals and other deliverables are to be prepared to the standard ordinarily produced by the Contractor - templates of which are available on request.

9. Time

- 9.1. Unless expressed otherwise in the Agreement:
 - 9.1.1. any date or timeframe for the performance of the Contractor's obligations is an estimate only; and
 - 9.1.2. the Contractor will complete the Works within a reasonable time as determined in the Contractor's reasonable discretion.
- 9.2. Where the Works are delayed or disrupted by any cause or event that is beyond the Contractor's reasonable control, the Contractor is entitled to:
 - 9.2.1. a reasonable extension of time to any date or timeframe for performance; and
 - 9.2.2. any costs, damages, losses or other liabilities (whether actual or contingent) directly or indirectly arising out of the delay or disruption.

10. Suspension

- 10.1. The Contractor may suspend the whole or any part of the Works or its other obligations under this Agreement at any time should the Client be in breach of Clause 6 or 7. Such a suspension will be deemed to be an act of delay by the Client for the purposes of Clause 9.2. The Contractor must recommence the suspended Works or its other obligations within 14 days of the Client remedying its breach.
- 10.2. Unless reasonably required as a matter of health, safety or environmental protection, the Client is not permitted to suspend the Works in whole or in part.

11. Termination

- 11.1. The Contractor may terminate the Agreement in the event of any breach of the Agreement by the Client.
- 11.2. If the Contractor commits a substantial breach of this Agreement, the Client may give the Contractor a written notice of default detailing the Contractor's breach with all relevant facts and giving the Contractor not less than 14 days to remedy the breach or advise why the Contractor does not consider that it has breached the Agreement. If the Contractor has committed a substantial breach of this Agreement and the Contractor fails to remedy the breach within the time set out in the Client's written notice, the Client may terminate the Agreement by written notice effective immediately. The Client will have no right to terminate the Agreement unless it has strictly complied with this clause.
- 11.3. Clauses 1, 2, 3, 5, 6, 7, 8, 12, 13, 14, 15, 16 and 17 of the Terms of Trade (including the subclauses therein) shall survive any form of termination of the Agreement.

12. Dispute Resolution

- 12.1. If a dispute or difference arises out of or in connection with the Agreement, a director or senior manager of each party (with the requisite authority

to effect resolution of the dispute/difference) must, within 5 business days of a written notice detailing the dispute being issued by either party, hold a meeting in an attempt to resolve the dispute in good faith.

- 12.2. Should the parties be unable to resolve the dispute within 10 business days of the written notice under Clause 12.1 being issued, either party may refer the dispute to arbitration or litigation.
- 12.3. The Master Builders Association of WA shall appoint a suitably qualified arbitrator should a dispute be referred to arbitration and an adjudicator for the purposes of the *Construction Contracts Act 2004*.

13. Limitation of Liability

- 13.1. Should any defects or omissions be identified in the Works, the Client must provide the Contractor with the first and reasonable opportunity to rectify such defects or omissions by providing written notice to the Contractor within 7 days of the defect or omission becoming apparent to the Client.
- 13.2. The Contractor's liability for any defects or omissions is limited to the cost of repair or replacement at current market value rates (whichever is less).
- 13.3. To the full extent permitted by law, the Contractor will not be liable to the Client, on any basis (including negligence, tort, contract, statute or otherwise), for any loss of profits, loss of business, loss of revenue, loss of opportunity, loss of goodwill, cost of capital, loss of use of property, loss of anticipated saving, increase in capital costs, increase in operating costs or any other financial or economic loss or indirect, special, incidental, or consequential loss or consequential damage arising under or in connection with this Agreement.
- 13.4. To the full extent permitted by law, the Contractor's total aggregate liability for any costs, losses, damages, fees, claims, actions or other form of liability, whether under or in connection with the Agreement, statute, in tort, equity, restitution or otherwise, is limited to 25% of the Price.

14. Waiver

- 14.1. No failure to exercise, or any delay in exercising, any right, power or remedy by the Contractor operates as a waiver. A waiver is not valid or binding on the Contractor unless made in writing.

15. Intellectual Property

- 15.1. The Client and the Contractor each acknowledge that this Agreement does not transfer ownership of any IP Rights that existed prior to this Agreement.
- 15.2. All and any IP Rights that are created under or in connection with the Agreement will vest in the Contractor.
- 15.3. The Client hereby grants an irrevocable licence to the Contractor to create, display, describe, vary or use any information, descriptions, photographs, images or depictions of the Goods or Works for marketing, tendering or other purposes.
- 15.4. The Client must ensure that no IP rights or moral rights of third parties are infringed in its performance of the Agreement. The Client will be responsible for any licence that is required or any royalty or other cost that must be incurred in order to comply with this provision.

16. Confidentiality

- 16.1. The Client must not, and must ensure that its Personnel do not, disclose or give to any person any information or document relating to the Contractor's business or the Agreement, unless such disclosure:
 - 16.1.1. is consented to in writing by the Contractor;
 - 16.1.2. is required to comply with any law or regulatory body; or
 - 16.1.3. is necessary for the enforcement or performance of this Agreement.

17. Notices

- 17.1. Any notice under this Agreement must be in writing and sent to an authorised representative of the other party.