



# TERMS & CONDITIONS OF TRADE

## 1. DEFINITIONS

- 1.1. "EPS" shall mean Eastern Property Services Pty Ltd, or any agents or employees thereof.
- 1.2. "Customer" shall mean the customer, any person acting on behalf of and the authority of the customer, or any person purchasing goods from EPS.
- 1.3. "Goods" shall mean all goods, chattels, or services, provides by EPS to the customer, and shall include without limitation all inspection and surveys work carried out in relation to construction, joinery, flooring, repairs and maintenance works, all charges for labour and work, hire charges, insurance charges, or any fee or charge associated with the supply of goods by EPS.
- 1.4. "Price" shall mean the cost of the goods as agreed between EPS and the customer subject to clause 4 of this contract.
- 1.5. "Latent Conditions" shall mean physical conditions on, underlying or adjacent to the Site which a competent contractor in the position of EPS would not or could not reasonably have anticipated or discovered if such contractor had inspected the Site with reasonable diligence before agree into perform the works or services; and all conditions and characteristics of the Site and its surrounds including but not limited to below ground or in-wall conditions, all natural and artificial things on or under the Site and all substances, voids, structures, utilities and services on or below the surface, contamination plus the characteristics and the condition of all structures and elements on or forming part of the Site.
- 1.6. "Site" shall mean land or lands and other places to be made available by the customer to EPS for the purposes of its contract with and engagement of EPS to perform the works or services under the proposal or quotation submitted by EPS.

## 2. ACCEPTANCE

- 2.1. Any instructions received by EPS from the customer for the supply of goods shall constitute acceptance of the terms and conditions contained herein.

## 3. COLLECTION AND USE OF INFORMATION

- 3.1. The customer authorises EPS to collect, retain and use any information about the customer, or for the purpose of assessing the customer's credit worthiness, enforcing any rights under this contract, or marketing any goods and services provided by EPS to any other party.

## 4. PRICE

- 4.1. Where no price is stated in writing or agreed to orally the goods shall be deemed to be sold at the current amount as such good are sold by EPS at the time of the contract.
- 4.2. The price may be increased by the amount of any reasonable increase in the cost of supply of the goods that is beyond the control of EPS between the date of the contact and the delivery of the goods.

## 5. PAYMENT

- 5.1. Payment for goods shall be made in full on or before the 14<sup>th</sup> day of the date of invoice, unless specifically agreed upon between EPS and the customer.
- 5.2. The customer is obliged to review invoices to review whether they are correct. In the event that – notwithstanding a respective reference in the invoice - failure to notify EPS of discrepancies in writing within a period of 10 days, the receivables as calculated in the statement shall be deemed acknowledged.

- 5.3. Interest may be charged on any amount owing after the due date at the rate of 1.5% per month.
- 5.4. Any expenses, disbursements and legal costs incurred by EPS in the enforcement of any rights contained in this contract shall be paid by the customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.5. Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.6. Unless specified otherwise, all invoices issued are subject to the payment claims under the Building and Construction Industry Security of Payment Act 2002 (VIC).

## **6. QUOTATION**

- 6.1. Where a quotation is given by EPS for goods:
  - 6.1.1. All quotations given by EPS are subject to acceptance by the customer within 90 days of the date of the quotation, unless otherwise specified in the quotation. Prices quoted for all products are subject to variation by EPS after the expiration of any time limit imposed in quotations supplied by EPS. Further prices may be amended by EPS if a significant error of fact can be shown in the original quotation.
  - 6.1.2. The quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary.
- 6.2. Where goods are required in addition to the quotation the customer agrees to pay for the additional cost of such goods.
- 6.3. All documentation and price lists supplied by EPS are confidential and shall remain the property of EPS and no part of any such documentation shall be divulged to another party or parties without the prior written consent of EPS.

## **7. LATENT CONDITIONS**

- 7.1. Quotations are based on visual inspection and assumed condition of the land/building, unless stated otherwise with evidence of a written description or detailed plans from a structural engineer or architect engaged by the customer. Any change to those conditions found to exist, or hazard that could not reasonably have been foreseen as work proceeds may result in additional charges to those initially indicated and EPS will not be held liable.
- 7.2. The customer irrevocably and unconditionally agrees that EPS shall have no liability of whatsoever nature arising out of or in connection with any Latent Conditions and that EPS shall not be required nor be obliged to pay for or to bear any cost, loss or expense in respect of the discovery of a Latent Condition regardless of the time of discovery and whether after the submission of its proposal or quotation, during the performance of the works or services or at any other time.
- 7.3. If a Latent Condition is discovered, the party discovering the same shall give prompt written notice to the other party and where possible before the Latent Condition is disturbed or disturbed further, with details of the Latent Condition, the additional work, resources, cost or time (if any) which the party estimates to be necessary to deal with the Latent Condition and any other details reasonably necessary for such notice.
- 7.4. The discovery of a Latent Condition shall require the customer to request a Variation in order to deal with the Latent Condition.

## **8. RISK**

- 8.1. When Title passes to the customer pursuant to clause 10.1 of this contract the goods are at the customer's risk whether delivery has been made or not.
- 8.2. Notwithstanding delivery of the goods or any part thereof as stated hereunder, Title to the ownership of goods does not pass from EPS to the customer until EPS has received full payment for goods and that any payment by cheque, note or other negotiable instrument has been duly cleared through EPS bank account.
- 8.3. EPS reserves the right to remove goods from the customer even if installed if payment is outstanding and take no responsibility for damage in doing so.

- 8.4. The goods are at the customers risk from the occurrence of first in time of any of the following events:
- 8.4.1. The passing of property to the customer;
  - 8.4.2. The physical delivery of the goods to the customer;
  - 8.4.3. The physical delivery to a carrier or other bailee whether named by the customer or not.

## **9. AGENCY**

- 9.1. EPS shall have the right to engage any suitably qualified person, business or corporation to perform any part or parts of the works or services under its supervision, subject to the requirement that EPS specifies the method and manner in which the part or parts is or are to be carried out and that EPS adequately supervises the performance of the part or parts of the works or services.
- 9.2. The customer authorises EPS to contract either as principal or agent for the provision of goods that are the matter of this contract.
- 9.3. Where EPS enters into a contract of the type referred to in clause 9.1 it shall be read with and form part of this agreement and the customer agrees to pay any amounts due under that contract.

## **10. DISPUTES**

- 10.1. No claim relating to delivery of goods shall be considered unless made within 14 days of delivery of the goods.

## **11. LIABILITY**

- 11.1. Notwithstanding any other term or condition under, arising out of or in connection with any proposal or quotation accepted by a customer of EPS and notwithstanding any other clause of these terms and conditions, the customer irrevocably and unconditionally acknowledges and agrees that EPS shall not be liable to its customer, and that the customer cannot make any claims or demands nor bring any actions, suits or proceedings, whether in contract, tort, at common law, in equity or otherwise, for any type of direct loss and damage or any type of indirect or consequential loss or damage or special damages including but not limited to the following:
  - 11.1.1. any costs, expenses, losses or damages for delay, whether liquidated or unliquidated or at common law and, for the avoidance of doubt, EPS shall not be required to negotiate nor agree upon any pre-ascertained and liquidated damages in connection with the performance of its works or services nor any other basis for the customer to claim damages for delay including unliquidated or common law damages;
  - 11.1.2. any loss of profits, loss of business, loss of revenue, loss of contracts, loss of production or loss of anticipated savings;
  - 11.1.3. any loss of opportunity or other economic loss of whatsoever nature;
  - 11.1.4. any increased costs or expenses;
  - 11.1.5. any loss or expense resulting from a claim by a third party.
- 11.2. The customer and EPS acknowledge that, under applicable State and Commonwealth law, certain clauses, conditions, guarantees and warranties may be implied in these terms and conditions and there are rights and remedies conferred on the customer in relation to the provision of goods or of services which cannot be excluded, restricted or modified by agreement ("Non-excludable Rights").
- 11.3. Except to the extent of Non-excludable Rights, EPS will not be liable for:
  - 11.3.1. any claim by the customer or any other person, including without limitation, any claim relating to or arising from all clauses, conditions, guarantees and warranties expressed or implied, and all rights and remedies conferred on the customer, by statute, the common law, equity, trade, custom or usage or otherwise; and

- 11.3.2. any representations, warranties, conditions or agreement made by any agent or representative which are not confirmed expressly by EPS in writing, and the liability of EPS for any such matters hereby is excluded.
- 11.4. Where (and to the extent) permitted by law the liability of EPS for a breach of a Non-Excludable right can be limited, the liability of EPS is limited, at the option of EPS, to one of the following:
  - 11.4.1. replacement of the goods or supply of equivalent goods;
  - 11.4.2. repair of the goods;
  - 11.4.3. payment of the costs of replacing the goods or acquiring equivalent goods; or
  - 11.4.4. payment of the cost of having the goods repaired.

## **12. WARRANTY**

- 12.1. Drawings, dimensions, weights, capacities, specifications and performances given or included by EPS are approximate only and no warranty is expressed or may be implied by the provision of them and the customer undertakes to check all such drawings, dimensions, weights, capacities, specifications and performances to ensure that they are correct for the customer's purposes.
- 12.2. All goods are supplied on the express condition that the goods will be used in accordance with any provided layout drawings, load tables, specifications or published product information brochures.
- 12.3. EPS does not provide any warranty that the goods are fit and suitable for the purpose for which they are required by the customer and shall not be liable if they are not.
- 12.4. Furthermore, EPS subscribes to the Master Builders Association of Victoria's Code of Ethics and is bound to observe the policies and rules of that organisation including any warranties that may apply.

## **13. CANCELLATION**

- 13.1. EPS shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of goods to the customer if the customer fails to pay any money owing after the due date or the customer commits an act of bankruptcy as defined by the Corporations Act (2001).
- 13.2. Any cancellation or suspension under clause 13.1 of this agreement shall not affect EPS claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the customer's obligations to EPS under this contract.

## **14. MISCELLANEOUS**

- 14.1. These Terms & Conditions may only be varied by specific written consent of a Director (or his/her authorised delegate) of EPS or its successor(s). Any terms which the customer may present which purport to vary these conditions shall not be effective unless so approved under contract between EPS and the customer.
- 14.2. Any variations to these Terms & Conditions will be deemed to have been received by the customer if they are forwarded to the last known postal address of the customer. A copy of the most current Terms & Conditions will be forwarded to any customer who has requested it in writing from EPS.
- 14.3. These conditions shall be governed and construed by the laws of the State of Victoria, irrespective of where the contract was made and any proceedings in respect of any claim matter or thing against EPS shall only be instituted or carried on in the State of Victoria.
- 14.4. The customer may have rights under a statutory warranty, term or condition arising under the Trade Practices Act (1974), or under any other relevant State or Federal law which may not be lawfully excluded by agreement of the parties and accordingly such statutory warranty, term or condition shall apply without exclusion or variation by the foregoing.