

**1. Definitions**

- 1.1 “Allworks” means Jake Vella T/A Allworks Group, its successors and assigns or any person acting on behalf of and with the authority of Jake Vella T/A Allworks Group.
- 1.2 “Customer” means the person/s or any person acting on behalf of and with the authority of the Customer requesting Allworks to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - (b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.3 “Works” means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by Allworks to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable (plus any GST where applicable) for the Works as agreed between Allworks and the Customer in accordance with clause 6 below.
- 1.5 “GST” means Goods and Services Tax (GST) as defined within the “A New Tax System (Goods and Services Tax) Act 1999” Cth.

**2. Acceptance**

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and Allworks.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.4 If Allworks has been requested by the Customer to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to the Customer irrespective of whether or not the repair goes ahead.
- 2.5 The Customer acknowledges and agrees that where Allworks has performed temporary repairs that:
- (a) Allworks offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
  - (b) Allworks will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair required.
- 2.6 Any advice, recommendation, information, assistance or service provided by Allworks in relation to Materials or Works supplied is given in good faith, is based on Allworks own knowledge and experience and shall be accepted without liability on the part of Allworks and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Materials or Works.
- 2.7 The Customer acknowledges and accepts that the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, Allworks reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price in accordance with clause 6.2, subject to prior confirmation and agreement of both parties. In all such cases Allworks will notify the Customer in advance of any such substitution, and also reserves the right to halt all Works until such time as Allworks and the Customer agree to such changes. Allworks shall not be liable to the Customer for any loss or damage the Customer suffers due to Allworks exercising its rights under this clause.
- 2.8 These terms and conditions may be meant to be read in conjunction with Allworks’ Hire Form, and:
- (a) where the context so permits, the terms ‘Works’ or ‘Materials’ shall include any supply of Equipment, as defined therein; and
  - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

**3. Authorised Representatives**

- 3.1 The Customer acknowledges that Allworks shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to Allworks, that person shall have the full authority of the Customer to order any Works, Materials and/or to request any variation thereto on the Customer’s behalf. The Customer accepts that they will be solely liable to Allworks for all additional costs incurred by Allworks (including Allworks’ profit margin) in providing any Works, Materials or variation/s requested thereto by the Customer’s duly authorised representative.

**4. Errors and Omissions**

- 4.1 The Customer acknowledges and accepts that Allworks 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 Allworks 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 Allworks in respect of the Works.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of Allworks; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

**5. Change in Control**

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

**6. Price and Payment**

- 6.1 At Allworks’ sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Allworks to the Customer in respect of Works performed or Materials supplied; or
  - (b) the Price as at the date of delivery of the Works according to Allworks’ current price list; or
  - (c) Allworks’ quoted Price (subject to clause 6.2) which shall be binding upon Allworks provided that the Customer shall accept Allworks’ quotation in writing within fourteen (14) days.
- 6.2 Allworks reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or

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- (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, obscured site/building defects which require remedial work, health hazards and safety considerations (such as the discovery of asbestos or other toxic materials), prerequisite work by any third party not being completed, hard rock barriers below the surface, or hidden pipes and/or wiring/cabling, etc.) which are only discovered on commencement of the Works; or
  - (d) if during the course of the Works, the Materials are not or cease to be available from Allworks' third party suppliers, then Allworks reserves the right to provide suitable comparable Materials; or
  - (e) in the event of increases to Allworks in the cost of labour or materials which are beyond Allworks' control.
- 6.3 Variations will be charged for on the basis of Allworks' quotation, and will be detailed in writing, and shown as variations on Allworks' invoice. The Customer shall be required to respond to any variation submitted by Allworks within ten (10) working days. Failure to do so will entitle Allworks 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.
- 6.4 At Allworks' sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by Allworks, which may be:
- (a) on completion of the Works; or
  - (b) by way of progress payments in accordance with Allworks' specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
  - (c) seven (7) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Allworks.
- 6.6 Payment may be made by cash, bank cheque, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Allworks.
- 6.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Allworks nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.8 No allowance has been included within the quotation for Works to be carried out outside of Allworks' normal working hours.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Allworks an amount equal to any GST Allworks must pay for any supply by Allworks under this or any other contract for the sale of the Materials. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 7. Provision of the Works**
- 7.1 Subject to clause 7.2 it is Allworks' responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Allworks claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Allworks' control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
  - (b) have the site ready for the Works; or
  - (c) notify Allworks that the site is ready.
- 7.3 At Allworks' sole discretion, the cost of delivery is included in the Price.
- 7.4 The Customer shall ensure that Allworks has clear and free access to the site at all times to enable them to undertake the Works. Allworks shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Allworks.
- 7.5 Any time specified by Allworks for delivery of the Works is an estimate only and Allworks will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties.
- 8. General Risk**
- 8.1 If Allworks retains ownership of the Materials under clause 11 then:
- (a) where Allworks is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by Allworks or Allworks' nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
  - (b) where Allworks is to both supply and install Materials then Allworks shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Customer.
- 8.2 The Customer warrants that any structures to which the Materials are to be affixed are able to withstand the installation thereof and that any plumbing connections and/or electrical connections (including, but not limited to, pipes, couplings, valves, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe plumbing unsafe wiring, dangerous access to roofing or latent or unfavourable soil conditions such as liquefaction residue or risk) that Allworks, or Allworks' employees, reasonably form the opinion that the Customer's premises is not safe for the Works to proceed then Allworks shall be entitled to delay the provision of the Works (in accordance with clause 7.2) until Allworks is satisfied that it is safe for the installation to proceed.
- 8.3 In the event asbestos or any other toxic substances are discovered at the site, that it is the Customer's responsibility to ensure the safe removal of the same. The Customer further agrees to indemnify Allworks against any costs incurred by Allworks as a consequence of such discovery. Under no circumstances will Allworks handle removal of asbestos product.
- 8.4 Allworks shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, Allworks accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

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- 8.5 Where Allworks requires that Materials, tools etc. required for the Works be stored at the site, the Customer shall supply Allworks a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Customer's responsibility.
- 8.6 Allworks shall upon installation ensure that all Materials are to be installed in a manner that is fully compliant with industry standards. If, for any reason, the Customer specifically requires the Materials to be installed in any way which goes against Allworks' recommendations and/or falls below industry standards; a request detailing that requirement must be made in writing to Allworks. Accordingly, Allworks offers no warranty in regards to the aforementioned.
- 8.7 Allworks accepts no responsibility for any damage or performance related problems with any Materials where they have not been used and/or maintained in accordance with Allworks' and/or the manufacturers' recommendations.
- 8.8 The Customer acknowledges that all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in Allworks' fact sheets, price lists or advertising material are indicative only and that they have not relied on such information.
- 8.9 Where the Customer has supplied materials for Allworks to complete the Works, the Customer acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. Allworks shall not be responsible for any defects in the materials, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Customer.
- 8.10 The Customer acknowledges that Allworks is only responsible for Materials that are replaced by Allworks, and in the event that other parts/goods, subsequently fail, the Customer agrees to indemnify Allworks against any loss or damage to the Works, or caused by the goods, or any part thereof howsoever arising.
- 8.11 The Customer warrants that no other tradesmen interfere with any Works and/or Materials supplied under this contract. Allworks shall not be liable for any costs, damages or loss however arising from the Customer's failure to comply with this clause.
- 8.12 Allworks accepts no responsibility for:
- (a) any damage or defects in any Materials caused by movement and/or interference of the said Materials;
  - (b) painting, re-decorating, re-sealing, carpentry or any other Works required for the restoration or making good of any surface/area where any Works have been carried out.
- 8.13 The Customer acknowledges that they shall:
- (a) not be entitled to withhold any payment due under this contract because of any delay in the connection of, or the supply of electricity to the Materials by an electrical distributor or any other third party;
  - (b) be responsible for any building work, excavation work, core drilling or any other non-standard surface penetrations that need to be carried out to enable Allworks to carry out the Works;
  - (c) provide and have erected scaffolding to enable the Works to be undertaken (where in Allworks' opinion it is deemed necessary). Any scaffolding must comply with industry safety standards and any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection, and where necessary, shall hold a current certificate of competency and/or be fully licensed;
  - (d) remove any furniture or personal items from the vicinity of the Works, and agrees that Allworks shall not be liable for any damage caused to those items through the Customers failure to comply with this clause;
  - (e) be wholly responsible for animals and/or children on the worksite;
  - (f) be wholly responsible for the removal of rubbish (including but not limited to contaminated soil stockpiling of excess spoil) from or clean-up of the worksite;
  - (g) supply electricity, temporary lighting, water, eating and first aid facilities if so required.

### 9. Plumbing/Gas Fitting Risk

- 9.1 The Customer acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where Allworks is requested to merely clear such blockages, Allworks can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, Allworks will immediately advise the Customer of the same and shall provide the Customer with an estimate for the full repair of the damaged pipe work.
- 9.2 In the event that the Customer requests Allworks to use drain/pipe unblocking equipment, and Allworks does not recommend the use of such equipment due to the risk of the equipment becoming lodged or stuck, Allworks may require the Customer or their agent to authorise commencement of the Works in writing. If the drain/pipe unblocking equipment subsequently becomes lodged or stuck, the Customer shall be responsible for the cost of repair, replacement and/or retrieval of said equipment.
- 9.3 Prior to commencement of any Works Allworks shall carry a routine soundness test of the site to ensure there are not any gas leaks in the existing pipework. In the event of such a discovery Allworks where necessary will have the gas supply capped-off until the fault is found and repaired at the Customer's expense.
- 9.4 The Customer acknowledges that in instances where the gas supply is turned off at the meter or bottles by Allworks in order to carry out the soundness test that parts within a gas appliance may fail due to not being turned off and serviced for a long period of time including, thermocouples, blocked pilot tubes, and SIT valves on pilot assemblies. Any costs associated with such an event shall be borne by the Customer.
- 9.5 The Customer warrants that any existing plumbing, gasfitting and/or associated services in or upon the worksite that is subject to the Materials and/or Works is in compliance with regulations. Allworks reserves the right to halt all Works (in accordance with clause 7.2) if in their opinion the worksite is unsafe and/or the current positioning of the unit is illegal due to not meeting the required clearances then the Customer will be informed of this and will be given a revised quotation or estimate to install the new appliance in a safe and legal position. Should the Customer not wish to proceed Allworks will charge a standard fee for the time spent on worksite based on Allworks' quotation.

### 10. Electrical/Air Conditioning Risk

- 10.1 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 10.2 Whilst the final location of the condensing unit is at the discretion of the Customer, a charge will apply as a variation as per clause 6.2, if the Customer requests the unit to not be located adjacent to the external wall, due to the underground piping required.
- 10.3 The final location of the wall, window or floor unit must be determined on site by the Customer.
- 10.4 The Customer acknowledges and agrees that Allworks does not guarantee any noise levels (external or internal) and Allworks shall not be held liable for any loss, damages, or costs, however resulting from noise levels.

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- 10.5 In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Customer shall be responsible for any and all costs involved.
- 10.6 The Customer acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- 10.7 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Customer then the Customer agrees to notify Allworks immediately upon any proposed changes. The Customer agrees to indemnify Allworks against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.2.
- 11. Underground/Hidden Services**
- 11.1 Prior to Allworks commencing the Works the Customer must advise Allworks of the precise location of all underground/hidden services on the site and clearly mark the same. The mains and services the Customer 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 the site.
- 11.2 Whilst Allworks will take all care to avoid damage to any services the Customer agrees to indemnify Allworks 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 11.1.
- 12. Compliance with Laws**
- 12.1 The Customer and Allworks shall 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 any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 12.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.
- 13. Title**
- 13.1 Allworks and the Customer agree that ownership of the Materials shall not pass until:
- (a) the Customer has paid Allworks all amounts owing to Allworks; and
  - (b) the Customer has met all of its other obligations to Allworks.
- 13.2 Receipt by Allworks 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.
- 13.3 It is further agreed that until ownership of the Materials passes to the Customer in accordance with clause 13.1:
- (a) the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Allworks on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for Allworks and must pay to Allworks the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
  - (c) the production of these terms and conditions by Allworks shall be sufficient evidence of Allworks' rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Allworks to make further enquiries.
  - (d) the Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for Allworks and must pay or deliver the proceeds to Allworks on demand.
  - (e) the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Allworks and must sell, dispose of or return the resulting product to Allworks as it so directs.
  - (f) unless the Materials have become fixtures the Customer irrevocably authorises Allworks to enter any premises where Allworks believes the Materials are kept and recover possession of the Materials.
  - (g) Allworks may recover possession of any Materials in transit whether or not delivery has occurred.
  - (h) the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Allworks.
  - (i) Allworks may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.
- 14. Personal Property Securities Act 2009 ("PPSA")**
- 14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 14.2 Upon assenting to these terms and conditions in writing the Customer 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 Materials and/or collateral (account) – being a monetary obligation of the Customer to Allworks for Works – that have previously been supplied and that will be supplied in the future by Allworks to the Customer.
- 14.3 The Customer 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 Allworks 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
    - (iii) correct a defect in a statement referred to in clause 14.3(a)(i) or 14.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, Allworks 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 Materials charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of Allworks;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of Allworks;
  - (e) immediately advise Allworks of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.

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- 14.4 Allworks and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 14.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 14.7 Unless otherwise agreed to in writing by Allworks, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.8 The Customer shall unconditionally ratify any actions taken by Allworks under clauses 14.3 to 14.5.
- 14.9 Subject to any express provisions to the contrary (including those contained in this clause 14) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 15. Security and Charge

- 15.1 In consideration of Allworks agreeing to supply the Materials, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 15.2 The Customer indemnifies Allworks from and against all Allworks' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Allworks' rights under this clause.
- 15.3 The Customer irrevocably appoints Allworks and each director of Allworks as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer's behalf.

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

- 16.1 The Customer must inspect all Materials on delivery (or the Works on completion) and must within twenty-four (24) hours of delivery notify Allworks in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Allworks to inspect the Materials or to review the Works provided.
- 16.2 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**).
- 16.3 Allworks acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Allworks makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. Allworks' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.5 If the Customer is a consumer within the meaning of the CCA, Allworks' liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.6 If Allworks is required to replace any Materials under this clause or the CCA, but is unable to do so, Allworks may refund any money the Customer has paid for the Materials.
- 16.7 If Allworks is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then Allworks may refund any money the Customer has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Customer which were not defective.
- 16.8 If the Customer is not a consumer within the meaning of the CCA, Allworks' liability for any defect or damage in the Materials is:
  - (a) limited to the value of any express warranty or warranty card provided to the Customer by Allworks at Allworks' sole discretion;
  - (b) limited to any warranty to which Allworks is entitled, if Allworks did not manufacture the Materials;
  - (c) otherwise negated absolutely.
- 16.9 Subject to this clause 16, returns will only be accepted provided that:
  - (a) the Customer has complied with the provisions of clause 16.1; and
  - (b) Allworks has agreed that the Materials are defective; and
  - (c) the Materials are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 16.10 Notwithstanding clauses 16.1 to 16.9 but subject to the CCA, Allworks 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 Customer failing to properly maintain or store any Materials;
  - (b) the Customer using the Materials for any purpose other than that for which they were designed;
  - (c) the Customer continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) interference with the Works by the Customer or any third party without Allworks' prior approval;
  - (e) the Customer failing to follow any instructions or guidelines provided by Allworks;
  - (f) fair wear and tear, any accident, or act of God.
- 16.11 In the case of second hand Materials, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Materials prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Allworks as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that Allworks has agreed to provide the Customer with the second hand Materials and calculated the Price of the second hand Materials in reliance of this clause 16.11.
- 16.12 Notwithstanding anything contained in this clause if Allworks is required by a law to accept a return then Allworks will only accept a return on the conditions imposed by that law.

### 17. Intellectual Property

- 17.1 Where Allworks has designed, drawn, written plans or a schedule of Works, or created any products for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in Allworks, and shall only be used by the Customer at Allworks' discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of Allworks.

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- 17.2 The Customer warrants that all designs, specifications or instructions given to Allworks will not cause Allworks to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Allworks against any action taken by a third party against Allworks in respect of any such infringement.
- 17.3 The Customer agrees that Allworks may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which Allworks has created for the Customer.

### 18. Default and Consequences of Default

- 18.1 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 Allworks' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Customer owes Allworks any money the Customer shall indemnify Allworks from and against all costs and disbursements incurred by Allworks in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Allworks' contract default fee, and bank dishonour fees).
- 18.3 Further to any other rights or remedies Allworks may have under this contract, if a Customer has made payment to Allworks, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Allworks under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.
- 18.4 Without prejudice to Allworks' other remedies at law Allworks shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Allworks shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Allworks becomes overdue, or in Allworks' opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer has exceeded any applicable credit limit provided by Allworks;
  - (c) the Customer becomes insolvent or bankrupt, 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 Customer or any asset of the Customer.

### 19. Cancellation

- 19.1 Without prejudice to any other remedies Allworks may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Allworks may suspend or terminate the supply of Works to the Customer. Allworks will not be liable to the Customer for any loss or damage the Customer suffers because Allworks has exercised its rights under this clause.
- 19.2 Allworks may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Customer. On giving such notice Allworks shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to Allworks for Works already performed. Allworks shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 In the event that the Customer cancels the delivery of Works the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Allworks as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.4 Cancellation of orders for products made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 20. Privacy Act 1988

- 20.1 The Customer agrees for Allworks to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by Allworks.
- 20.2 The Customer agrees that Allworks may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 20.3 The Customer consents to Allworks being given a consumer credit report to collect overdue payment on commercial credit.
- 20.4 The Customer agrees that personal credit information provided may be used and retained by Allworks for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or
  - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Works; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Works.
- 20.5 Allworks may give information about the Customer 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 Customer including credit history.
- 20.6 The information given to the CRB may include:
- (a) personal information as outlined in 20.1 above;
  - (b) name of the credit provider and that Allworks is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Customer'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, 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

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the Customer no longer has any overdue accounts and Allworks has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);

(g) information that, in the opinion of Allworks, the Customer has committed a serious credit infringement;

(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

20.7 The Customer shall have the right to request (by e-mail) from Allworks:

(a) a copy of the information about the Customer retained by Allworks and the right to request that Allworks correct any incorrect information; and

(b) that Allworks does not disclose any personal information about the Customer for the purpose of direct marketing.

20.8 Allworks will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.

20.9 The Customer can make a privacy complaint by contacting Allworks via e-mail. Allworks will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

## 21. Building and Construction Industry Security of Payments Act 1999

21.1 At Allworks' sole discretion, if there are any disputes or claims for unpaid Works and/or Materials then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.

21.2 Nothing in this agreement is intended to have the effect 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.

## 22. Service of Notices

22.1 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.

22.2 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.

## 23. Trusts

23.1 If the Customer at any time upon or subsequent to entering into the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Allworks may have notice of the Trust, the Customer covenants with Allworks as follows:

(a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;

(b) the Customer 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 Customer against the Trust or the trust fund. The Customer 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 Customer will not without consent in writing of Allworks (Allworks will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;

(i) the removal, replacement or retirement of the Customer 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.

## 24. General

24.1 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.

24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which Allworks has its principal place of business, and are subject to the jurisdiction of the Penrith Courts in that state.

24.3 Subject to clause 16 Allworks shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Allworks of these terms and conditions (alternatively Allworks' liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).

24.4 Allworks may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.

24.5 The Customer cannot licence or assign without the written approval of Allworks.

24.6 Allworks may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Allworks' subcontractors without the authority of Allworks.

24.7 The Customer agrees that Allworks may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Allworks to provide Works to the Customer.

24.8 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.

24.9 Both parties warrant that they have the power to enter into 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.