

**1. Definitions**

- 1.1 "MWC" shall mean Mega Works Constructions its successors and assigns or any person acting on behalf of and with the authority of Mega Works Constructions.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by MWC to the Client.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by MWC to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by MWC to the Client.
- 1.5 "Services" shall mean all Services supplied by MWC to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Works" shall mean all works undertaken by the MWC for the Client and includes any advice or recommendations.
- 1.7 "Price" shall mean the price payable for the Goods as agreed between MWC and the Client in accordance with clause 3 of this contract.

**2. Acceptance**

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

**3. Price And Payment**

- 3.1 At MWC's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by MWC to the Client in respect of Works, Goods and Services supplied; or
- (b) MWC's current price at the date of Works, Goods and Services; or
- (c) MWC's quoted Price (subject to clause 3.2) which shall be binding upon MWC provided that the Client shall accept MWC's quotation in writing within twenty eight (28) days.
- 3.2 MWC reserves the right to change the Price in the event of a variation to MWC's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as

a result of additional works required due to hidden or unidentifiable difficulties such as hard rock barriers below the surface or contaminated material found or iron reinforcing rods in concrete or as a result of increases to MWC in the cost of materials and labour) will be charged for on the basis of MWC's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.

3.3 At MWC sole discretion:

- (a) payment for approved Clients shall be made by instalment in accordance with the MWC's payment schedule: or
- 3.4 Payment for approved Clients may submit a detailed payment claim at intervals not less than one week for work performed up to the end of each week. The value of work that has been performed up to that current date.
- 3.5 At MWC's sole discretion a deposit may be required.
- 3.6 Time for payment for the Works, Goods and Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due on the completion of works.
- 3.7 MWC's payment terms are fourteen (14) days following the date of the invoice.
- 3.8 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two percent (2%) of the Price), or by direct credit, or by any other method as agreed to between the Client and MWC.
- 3.9 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 3.10 Receipt by MWC of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then MWC's ownership or rights in respect of the Works, Goods and Services shall continue.

**4. Delivery**

- 4.1 At MWC's sole discretion delivery of the Works, Goods and Services shall take place when the Client takes possession of the Works, Goods and Services at the Client's nominated address (in the event that the Works, Goods and Services are delivered by MWC or MWC's nominated carrier).
- 4.2 At MWC's sole discretion the costs of delivery are:
- (a) included in the Price; or
- (b) in addition to the Price; or
- (c) for the Client's account.
- 4.3 Delivery of the Works, Goods and Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 4.4 MWC may deliver the Works, Goods and Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 4.5 The failure of MWC to deliver shall not entitle either party to treat this contract as repudiated.
- 4.6 MWC shall not be liable for any loss or damage whatsoever due to failure by MWC to deliver the Works, Goods and

Services (or any of them) promptly or at all, where due to circumstances beyond the control of MWC.

4.7 The Client shall make all arrangements necessary to take delivery of the Works, Goods and Services whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Works, Goods and Services as arranged then MWC shall be entitled to charge a reasonable fee for a cancelled delivery or redelivery.

**Risk**

Where the Client expressly requests MWC to leave Goods outside MWC's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all.

5.2 If any of the surrounding areas, structures, items or services that are to remain unharmed are damaged or destroyed prior to completion of the works, MWC is entitled to receive all insurance proceeds payable. This shall apply whether or not the price has become payable under this agreement. The production of these terms and conditions by MWC is sufficient evidence of the MWC's rights to receive the insurance proceeds without the need for any person dealing with MWC to make further enquiries.

5.3 The Client acknowledges that once the site is handed over to MWC that:

- (a) they shall have no claim whatsoever to any materials remaining at the worksite unless specifically agreed in writing; and
- (b) that unless such an agreement is in place MWC shall not be liable to compensate the Client for any materials left at the worksite.

5.4 Finished levels and contours of the site are limited to natural levels and are not to site plan or earth work specifications.

5.5 Whilst every care is taken to prevent any damage to the Client's property and the property of any third party/s, no liability is accepted for any damage that may occur whilst undertaking works under the instruction of the clients or the Clients agent.

5.6 Whilst care is taken when trees and buildings are removed, no liability is accepted for any damage to fences, services and or neighbouring properties.

5.7 MWC shall not be liable for any loss or damage caused in accessing the site beyond reasonable control of MWC (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas).

**6. On Site Works / Underground Locations**

6.1 Prior to MWC commencing any work the Client must advise MWC of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

6.2 Whilst MWC will take all care to avoid damage to any underground services the Client agrees to indemnify MWC 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 7.1.

**7. Asbestos/Hazardous Materials**

- 7.1 Prior to MWC commencing any work the Client must advise MWC of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 7.2 Prior to MWC commencing any Works, Goods and Services, the Client must advise MWC of the precise location of all know Asbestos/Hazardous Materials on the site and clearly mark the same. Removal from the site and disposal of Asbestos/Hazardous Materials shall at all times be the Client's responsibility unless otherwise agreed in writing.
- 7.3 In the event that MWC discovers Asbestos/Hazardous Materials whilst undertaking any works MWC shall immediately advise the Client of the same and shall be entitled to suspend the works pending a risk assessment in relation to those materials. The Client shall be liable for all additional costs (however arising) incurred by MWC as a result of the discovery of Asbestos/Hazardous Materials and/or any suspension of works in relation thereto.
- 7.4 Where MWC agrees to remove any Asbestos/Hazardous Materials on the Client's behalf then the Clients shall be liable for all costs incurred by MWC in the removal and disposal those materials.
- 7.5 Both the Client and MWC agree that they will at all times ensure that they comply with provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works, including occupational health and safety laws relating to building/construction sites, and any other relevant safety standards or legislation, particularly those in relation to Asbestos/Hazardous Materials and the safe removal and disposal of the same.
- 8. Access**
- 8.1 The Client shall ensure that MWC has clear and free access to the work site at all times to enable them to undertake the works. MWC 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 MWC.
- 9. Errors and Omissions**
- 9.1 The Client shall inspect the premises on completion and shall within forty eight (48) hours of completion (time being of the essence) notify MWC of any alleged defect, errors, omissions or failure to comply with the agreed works to be undertaken or quote. The Client shall afford MWC an opportunity to inspect the works within a reasonable time following delivery if the Client believes the works are defective in any way. If the Client shall fail to comply with these provisions, the works shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage
- 9.2 For defective works, which MWC has agreed in writing that the Client is entitled to reject, MWC liability is limited to (at MWC discretion) rectifying the works, expect

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

#### **10. The Commonwealth Trade Practices<sup>13.</sup> Act 1974 ("TPA") and Fair Trading Acts<sup>13.1</sup> ("FTA")**

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

#### **11. Client's Disclaimer**

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

#### **12. Default & Consequences of Default**

12.1 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 one half percent (2.5%) per calendar month (and at MWC's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

12.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred, by MWC.

12.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify MWC from and against all costs and disbursements incurred by MWC in pursuing the debt including legal costs on a solicitor and own client basis and MWC's collection agency costs.

12.4 Without prejudice to any other remedies, MWC may have, if at any time the Client is in breach of any obligation (including those relating to payment), MWC may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. MWC will, not be liable to the Client for any loss or damage the Client suffers because MWC has exercised its rights under this clause.

12.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.

12.6 Without prejudice to MWC's other remedies at law MWC shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to MWC shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to MWC becomes overdue, or in MWC's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors

or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

#### **Security And Charge**

Despite anything to the contrary contained herein or any other rights which MWC may have howsoever:

- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to MWC or MWC's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that MWC (or MWC's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should MWC elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify MWC from and against all MWC's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint MWC or MWC's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.

#### **Cancellation**

MWC may cancel any contract to which these terms and conditions apply or cancel the supply of Works at any time before the Works are due to commence. On giving such notice MWC shall repay to the Client any sums paid in respect of the Price. MWC shall not be liable for any loss or damages whatsoever arising from such cancellation.

In the event that the Client cancels delivery of Works the Client shall be liable for any loss incurred by MWC (including, but not limited to, any loss of future earnings) up to the time of cancellation.

#### **Privacy Act 1988**

The Client and/or the Guarantor/s agree for MWC to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by MWC.

The Client and/or the Guarantor/s agree that MWC may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the credit worthiness of Client and/or Guarantor/s.

The Client consents to MWC being given a consumer credit report to collect overdue

- 15.4 payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).  
The Client agrees that personal credit information provided may be used and retained by MWC for the following purposes and for other purposes as shall be agreed between the Client and MWC or required by law from time to time:
- (a) provision of Works; and/or
  - (b) marketing of Works by MWC, its agents or distributors in relation to the Works; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Works; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
  - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Works.
- 15.5 MWC may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
16. **Building and Construction Industry Security of Payments Act 1999**
- 16.1 At MWC's sole discretion, if there are any disputes or claims for unpaid Works and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 16.2 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.
17. **General**
- 17.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 17.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 17.4 MWC 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 MWC of these terms and conditions.
- 17.5 In the event of any breach of this contract by MWC the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Works.
- 17.6 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 MWC nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.7 MWC may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 17.8 The Client agrees that MWC may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which MWC notifies the Client of such change.
- 17.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 17.10 The failure by MWC to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect MWC's right to subsequently enforce that provision.
18. **Personal Property Securities Act 2009 (PPSA)**
- 18.1 In this clause financing statement financing change statement, security agreement and security interest has meaning given to it by the PSSA.
- 18.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods, Services and Works that has previously been supplied and that will be supplied in the future by MWC to the Client.
- 18.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provided any further information (such information to be complete, accurate and up-to-date in all respects) which MWC 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 18.3(a)(i) or 18.3(a)(ii)
  - (b) Indemnity, and upon demand reimburse, MWC 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, Services and Works charged thereby;
  - (c) Not register a financing change statement in respect of a security interest without the prior written consent of MWC;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relations to the Goods, Services and Works in favour of a third party without the prior written consent of MWC;
- 18.4 MWC 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.
- 18.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 18.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 18.7 Unless otherwise agreed to in writing by MWC the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 18.8 The Client must unconditionally ratify any actions taken by MWC under clauses 18.3 to 18.5.
- 18.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.