

**TIME SAVER SERVICES (ABN 38 645 785 634)**

**STANDARD TERMS AND CONDITIONS OF QUOTATION AND TENDER FOR LANDSCAPING MATERIAL, SERVICES AND INSTALLATION CONTRACT (Residential and Commercial Quotation and Tender Terms and Conditions).**



**1. Definitions**

“Contractor” means Time Saver Services, its successors and assigns or any person acting on behalf of and with the authority of Time Saver Services.

“Client” means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.

“Works” means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Contractor to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).

“Price” means the Price payable (plus any GST where applicable) for the Works as agreed between the Contractor and the Client in accordance with clause 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**

The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.

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 agreement between the Client and the Contractor.

Where the Client is a tenant (and therefore not the owner of the land and premises where the Materials are to be installed) then the Client warrants that full consent has been obtained from the owner for the Contractor to install the Materials on the owner’s land and premises. The Client acknowledges and agrees that they shall be personally liable for full payment of the Price for all works provided under this agreement and to indemnify the Contractor against any claim made by the owner of the

premises (howsoever arising) in relation to the installation of the Materials and the provision of any related Works by the Contractor except where such claim has arisen because of the negligence of the Contractor when installing the Materials.

The Client agrees that they shall upon request from the Contractor provide evidence that:

they are the owner of the land and premises upon which the Works are to be undertaken; or

where they are a tenant, that they have the consent of the owner for the Materials to be installed on the land and premises upon which the works are to be undertaken.

#### **Heads of Agreement: The Customer/Principal Contractor**

- agrees to provide access to the site sufficient for Time Saver Services to carry out its works. The Client acknowledges and agrees that in the event the Contractor requires access, in order to undertake the Works, to an adjoining or adjacent property or land to the nominated job site, that is not owned by the Client, then it is the Client's responsibility to gain permission from the land owner to use the above-mentioned property throughout the process of delivering the Works. In the event the land owner denies access or use of the land or property, the Client shall be liable for all costs incurred by the Contractor in gaining permission to access and/or use the property through any legal process that may be deemed necessary.
- agrees that the Customer/Principal Contractor will assume the risk for all physical conditions and characteristics of the site that differ materially from what was observable on the surface of the site at the date of the site inspection or quote/tender proposal, whichever is earliest (latent conditions).
- agrees that the Customer/Principal Contractor will assume the risk for any discrepancies, inconsistencies, or errors in the documentation and/or information.
- will arrange for and cover associated costs for procurement of materials, plant, equipment and services not allowed for in the quote/tender proposal.
- will obtain all notices/permits required, give notices, pay all levies, charges, fees, and deposits, and provide all required information by the relevant authorities.
- agrees that all tax invoices from Time Saver Services are claims under the Building & Construction Industry Security of Payments Act 1999.
- agrees that Time Saver Services may (in its discretion) submit payment claims by email on the completion of items of work rather than weekly, fortnightly, or monthly.
- agrees to full payment of Time Saver Services invoices within 5 days from the date the invoice is dated.
- agrees to make payment by electronic funds transfer into the Time Saver Services account nominated on the tax invoice.
- agrees to not withhold retention monies and/or bonds.
- agrees that it may not set-off or deduct from any monies due (or which may become due) to Time Saver Services.
- agrees that it may not vary the scope of the works unless Time Saver Services agrees to the variation, including any adjustments to the date for completion and the price.
- agrees that it must notify Time Saver Services of any defects in its work within 7 days after the date of completion, after which point the Customer/Principal Contractor is barred from alleging that there are any defects in the works.
- indemnifies Time Saver Services against any loss, expense or damage of any nature, including financial loss and lawyers' fees and expenses on an indemnity basis, suffered or incurred by Time Saver Services arising out of the performance of the work and its other obligations under this agreement, including loss, expense or damage.
- agrees that Time Saver Services maximum aggregate liability in connection with this agreement is limited to the greater of 10% of the price and any insurance proceeds actually recovered. This clause will survive termination of this agreement.
- agrees that, if Time Saver Services is delayed or incurs any additional costs as a result of any of the following causes, it shall provide the Customer/Principal Contractor with a notice setting out details of any delay, any amendment to the date for completion of the works, and any adjustment to the price. The causes are:
  - inclement weather or conditions resulting from inclement weather;

- any order of a court or tribunal that the work be suspended;
- any act or omission of the Customer/Principal Contractor;
- any industrial dispute affecting the progress of work;
- a variation to the scope of the work;
- a suspension of the work;
- latent conditions;
- any discrepancies, inconsistencies, or errors in the documents and/or information; or any other matter, cause or thing beyond the control of Time Saver Services.
- agrees that all disputes or differences must be resolved as follows:
  - written notice of any dispute or difference must be given to the other party, setting out the facts upon which the dispute or difference is based;
  - senior representatives of the parties must meet within 7 days after the date of the notice (or such longer time as they might agree in writing);
  - if the senior representatives cannot resolve the dispute or difference within 28 days after the date of the notice (or such longer time as the parties might agree in writing), either party may commence litigation.

If any provision of a Quote/Tender Proposal shall at any time be found to be or become void, voidable or unenforceable, the remaining provisions of the Quote/Tender Proposal shall nevertheless continue to be of full force and effect.

### **3. Electronic Transactions Act 2003**

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 2003 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### **4. Change in Control**

The Client shall give the Contractor not less than fourteen (7) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.

### **5. Price and Payment**

At the Contractor's sole discretion, the Price shall be either:

- as indicated on invoices provided by the Contractor to the Client in respect of Works performed or Materials supplied; or
- the Contractor's quoted Price (subject to clause 2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days. Unless otherwise stated, quotations shall not have an allowance for:
  - unforeseen scenarios such as concrete sub-based or drainage systems; or
  - additional excavation and disposal costs above what estimated on quotation/tender.

The Contractor reserves the right to change the Price:

- if a variation to the Materials which are to be supplied is requested; or
- if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
- where additional Works are required due to the discovery of hidden or unidentifiable difficulties which are beyond the Contractor's ability to accurately assess (including, but not limited to, poor weather conditions, limitations to accessing the site, sub-surface soil conditions (such as hard rock barriers such as limestone below the surface, tree stumps or iron reinforcing rods in concrete), obscured site defects, hidden services, additional site works requiring shoring,

piling, piercing, propping, under-pinning, remobilising or work site, soil stabilisation (if not included in the contract), or additional engineering required to acquire building license and/or imposed by site conditions or council requirements,) remobilisation of the work site, removal of excess soils or rubble etc) which are only discovered on commencement of the Works; or

- in the event of increases to the Contractor in the cost of labour or materials which are beyond the Contractor's control.
- Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Client shall be required to respond to any variation submitted by the Contractor within two (2) working days. Failure to do so will entitle the Contractor 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.
- At the Contractor's sole discretion, a non-refundable deposit may be required to secure a booking with the commencement date to be confirmed and that any such deposit paid will be deducted from the final invoice.

Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:

- on completion of the Works; or
- before the delivery of the Work; or
- by way of progress payments in accordance with the Contractor's specified progress payment schedule and 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. Generally, the payment plan is based on:
  - a deposit;
  - a payment to cover all the materials costs to be paid on commencement of the Works;
  - an interim payment of fifty percent (50%) of the remaining balance due halfway during construction where such construction is planned for more than five (5) days;
  - balance of outstanding amount due on completion.
- failing any notice to the contrary, the date which is five (5) days following the date of any invoice given to the Client by the Contractor.
- Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Contractor.
- 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 the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- Unless otherwise stated the Price does not include GST. When requested, in addition to the Price the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client 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.
- The risk of payment by cheque through the post or by electronic funds transfer rests with the Client.

## **6. Delivery of the Works**

Subject to clause 2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.

The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Client to:

- make a selection; or
- have the site ready for the Works; or
- notify the Contractor that the site is ready.

At the Contractor's sole discretion, the cost of delivery is either included in the Price.

The Contractor may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

Any time specified by the Contractor for delivery of the Works is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Client 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. In the event that the Contractor is unable to supply the Works as agreed solely due to any action or inaction of the Client, then the Contractor shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

Where the Client requires the Works to be rescheduled or cancelled (as per clause 3), the Client is required to provide the Contractor with at least forty-eight (48) hours' notice prior to the scheduled commencement time.

The Contractor recommends that where additional work is to be performed by third parties after the completion of the Contractor's Works, that such scheduling allows for any delays that may affect the Contractor satisfactorily completing the Works in the proposed timeframe (including, but not limited to, events as per clause 2, inclement weather, etc.).

## **7. Risk**

If the Contractor retains ownership of the Materials under clause 14 then:

- where the Contractor is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either;
- the Client or the Client's nominated carrier takes possession of the Materials at the Contractor's address; or
- the Materials are delivered by the Contractor or the Contractor's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- Notwithstanding the provisions of clause 1 if the Client specifically requests the Contractor to leave Materials outside the Contractor's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- The Contractor reserves the right not to clean the site if animal faeces or other contaminants could cause a health issue for the Contractor's employees. If the Contractor is requested by the Client to remove animal faeces or other contaminants from the site then the Contractor, at their discretion, may charge an additional fee.
- Where the Client has supplied materials for the Contractor to complete the Works, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. The Contractor shall not be responsible for any defects in the materials, any loss or damage to vegetation (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- The Client shall have any materials to be supplied for the completion of the Works onsite prior to commencement of the Works.
- Where the Contractor requires that Materials, fittings and appliances, or plant and tools required for the Works be stored at the Site, the Client shall supply the Contractor a safe area for storage and shall take all reasonable efforts to protect all items from possible 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 Client's responsibility.
- Where the Contractor is required to install the Materials the Client warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and the Contractor shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation

(including but not limited to insufficient or defective foundations, walls or other structures not erected by the Contractor).

- Where the Contractor gives advice or recommendations to the Client, or the Client's agent, regarding the suitability of the weeds, grass (including, but not limited to, moisture content or weather forecast), and such advice or recommendations are not acted upon then the Contractor shall not be liable in any way whatsoever for any damages or losses that occur and any warranties, resupply or defects clauses are revoked.
- The Client acknowledges that the Contractor shall take due care in spraying the specified area, however the Client accepts that in some circumstances and atmospheric conditions that spray drift may result in some damage to the peripheral area.
- The Client accepts and acknowledges that shrubs, plants, natural turf and any other flora, foliage or vegetation supplied by the Contractor are organic in nature and require care and maintenance. The Contractor reserves the right to not accept liability for the plants where such plants may have become affected or died due to the Client's failure to properly maintain the plants and/or to follow any instructions or guidelines provided by the Contractor in regard to the proper care of the plants (including but not limited to, adequate watering of the plants).
- Where the Contractor provides lawn mowing, the Client shall ensure the areas are cleared and any in-ground irrigation sprinklers shall be retracted to a suitable position for mowing over, or clearly marked if retraction of such sprinklers are not possible.

The Client further acknowledges that Materials supplied may:

- fade or change colour over time; and
- expand, contract or distort as a result of exposure to heat, cold, weather; and
- mark or stain if exposed to certain substances; and
- be damaged or disfigured by impact or scratching.
  
- The Client accepts that the use of loud machinery may need to be used for the completion of the Works and shall be the responsibility to inform the Contractor in advance of suitable times for the use of such machinery. These machines may also generate dust and smoke and therefore the Contractor recommends that windows and doors are kept shut whilst such machinery is in use.

## **8. Client's Responsibilities**

The Client acknowledges that;

- it is their responsibility to ensure that all Materials which the Contractor is required to install are of the correct type, size, rating, standard, quality, colour and finish, and are as specified in the specifications, drawings and plans upon which the Contractor based the quotation on and therefore, the Client agrees to indemnify the Contractor against any costs incurred by the Contractor in rectifying such errors if required.
- Unless stated, the Contractor is not responsible for the removal of trade waste (including, but not limited to, contaminated soil stockpiling of excess spoil) from or clean-up of the building/constructions site/s. This is the responsibility of the Client or the Client's agent. Under no circumstances will the Contractor handle removal of asbestos product.
- they are to inform the Contractor prior to fertiliser or weed spreading of any organic enterprises adjacent to the property of any streams, shallow aquifers or any other geological feature that could be harmed by the accidental introduction of fertiliser, herbicides or pesticides.
  
- It is further agreed that the Client will supply power, temporary lighting, toilet, eating and first aid facilities if required.

## **9. Access**

The Client shall ensure that the Contractor has clear and free access to the work site at all times to enable them to undertake the Works. The Contractor 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 the Contractor.

Access shall only be allowed during standard working hours and under the Contractor's supervision.

## **10. Surplus Materials**

Unless otherwise stated elsewhere in this contract:

- only suitable new Materials will be used;
- demolished materials remain the Client's property; and
- Materials which the Contractor brings to the worksite which are surplus remain the property of the Contractor unless such Materials have been paid for by the Client.

## **11. Dial Before You Dig**

Location of underground services by a licensed service locator is mandatory prior to commencement of any works. "Dial Before You Dig" should be consulted and any potential underground services marked on site. Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor 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. If the Client requests the Contractor to engage the service locator then this shall be in addition to the Price.

## **12. Underground Locations**

Prior to the Contractor commencing any work the Client must advise the Contractor 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.

Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor 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 1.

## **13. Compliance with Laws**

The Client and the Contractor 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.

The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.

The Client agrees that the site will comply with any work occupational health and safety laws health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

#### 14. Title

The Contractor and the Client agree that ownership of the Materials shall not pass until:

- the Client has paid the Contractor all amounts owing to the Contractor; and
- the Client has met all of its other obligations to the Contractor.
- Receipt by the Contractor 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.

It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 1:

- the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Contractor on request.
- the Client holds the benefit of the Client's insurance of the Materials on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
- the production of these terms and conditions by the Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor to make further enquiries.
- the Client 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 Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand.
- the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs.
- unless the Materials have become fixtures the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials.
- the Contractor may recover possession of any Materials in transit whether or not delivery has occurred.
- the Client 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 the Contractor.
- the Contractor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

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

The Client must inspect all Materials on delivery (or the Works on completion) and must within two (2) days of delivery notify the Contractor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Client must allow the Contractor to inspect the Materials or to review the Works provided.

The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.



If the Client is a consumer within the meaning of the Competition and Consumer Act 2010 (CCA), the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.

If the Contractor is required to replace any Materials under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Client has paid for the Materials.

If the Contractor 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 the Contractor may refund any money the Client 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 Client which were not defective.

If the Client is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Materials is:

- limited to the value of any express warranty or warranty card provided to the Client by the Contractor at the Contractor's sole discretion;
- limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Materials;
- otherwise negated absolutely.

Subject to this clause 15, returns will only be accepted provided that:

- the Client has complied with the provisions of clause 1; and
- the Contractor has agreed that the Materials are defective; and
- the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
- the Materials are returned in as close a condition to that in which they were delivered as is possible.

Notwithstanding clauses 1 to 15.9 but subject to the CCA, the Contractor shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- the Client failing to properly maintain or store any Materials;
- the Client using the Materials for any purpose other than that for which they were designed;
- the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- interference with the Works by the Client or any third party without the Contractor's prior approval;
- the Client failing to follow any instructions or guidelines provided by the Contractor;
- fair wear and tear, any accident, or act of God.

In the case of second hand Materials, unless the Client is a consumer under the CCA, the Client 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 the Contractor as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that the Contractor has agreed to provide the Client with the second-hand Materials and calculated the Price of the second-hand Materials in reliance of this clause 11.

Notwithstanding anything contained in this clause if the Contractor is required by a law to accept a return then the Contractor will only accept a return on the conditions imposed by that law.

## **16. Intellectual Property**

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

The Client warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.

The Client agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Contractor has created for the Client.

## **17. Default and Consequences of Default**

Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of three percent (3%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's contract default fee, and bank dishonour fees).

Further to any other rights or remedies the Contractor may have under this contract, if a Client has made payment to the Contractor, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.

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

- any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
- the Client has exceeded any applicable credit limit provided by the Contractor;
- the Client 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
- a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## **18. Cancellation**

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

The Contractor 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 Client. On giving such notice the Contractor shall repay to the

Client any sums paid in respect of the Price, less any amounts owing by the Client to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.

In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).

Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

## **19. Dispute Resolution**

If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within seven (7) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference, each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

- referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

## **20. Service of Notices**

Any written notice given under this contract shall be deemed to have been given and received:

- by handing the notice to the other party, in person;
- by leaving it at the address of the other party as stated in this contract;
- by sending it by registered post to the address of the other party as stated in this contract;
- 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;
- if sent by email to the other party's last known email address.

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.

## **21. General**

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.

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

Subject to clause 15 the Contractor 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 the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).

Neither party to this contract may assign this contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld). The Contractor 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 Client agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.

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

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.

Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.

## **22. EXCLUSION/LIMITATION OF LIABILITY**

Time Saver Services, its staff and subcontractors shall not under any circumstances be liable for any damages of any kind arising out of, in connection with or relating to the services or works offered, being completed or completed at the clients premises, including without limitation any liability: -

- as a seller or reseller of any products or services,
- for any defective products,
- for any incorrect or inaccurate information,
- for statements or conduct of any third party on the client's premises,
- or for any other matter relating to the client's premises.

This is a comprehensive limitation of liability that applies to all damages of any kind, including without limitation any direct, indirect, special, incidental or consequential damages (including without limitation damages for loss of business, loss of profits, loss of good will, loss of use, loss of data, cost of procuring substitute goods, services or information, litigation or the like), whether based on breach of contract, breach of warranty, tort (including without limitation negligence), product liability or otherwise, even if the client's advises of the possibility of such damages. Notwithstanding the foregoing, the sole and entire maximum liability of Time Saver Services, its staff and subcontractors for any reason, and the clients sole and exclusive remedy for any cause or claim whatsoever, shall be limited to the amount paid by you for any product or service purchased by you from Time Saver Services, its staff and subcontractors.

## **23. INDEMNITY**

You agree to indemnify, defend and hold harmless Time Saver Services, its staff and subcontractors against all claims, demands, causes of action, losses, expenses, damages and costs, including without limitation any reasonable solicitor's fees, resulting or arising from or relating to any services or works conducted by Time Saver Services, its staff and subcontractors.

**24. CONTRADICTORY TERMS**

Should any term(s) or condition(s) in any way be contradictory to any other term(s) or condition(s) in these Terms and Conditions; then the term(s) and condition(s) that favour(s) TIME SAVER SERVICES will be agreed to by the Client or Customer and enforceable by Time Saver Services.

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