
Monaco Global Pty Limited T/A Monaco Global – Terms & Conditions of Trade

1. Definitions

- 1.1 **"Contract"** means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **"Monaco Global"** means Monaco Global Pty Limited T/A Monaco Global, its successors and assigns or any person acting on behalf of and with the authority of Monaco Global Pty Limited T/A Monaco Global.
- 1.3 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Monaco Global to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 **"Goods"** means all Goods supplied either by sale or by hire to the Client by Monaco Global, at the Client's request from time to time, and:
- (a) includes any erection, dismantling and transport of the Goods ("**Services**"), any parts, accessories and/or consumables supplied by Monaco Global to the Client, either separately or deposited incidentally by Monaco Global in the course of it conducting, or supplying to the Client, the Goods; and
 - (b) where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other.
- 1.5 **"Minimum Hire Period"** means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Monaco Global to the Client.
- 1.6 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "**Personal Information**" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.7 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.8 **"Charge"** means the Charge payable (plus any GST where applicable) for the Goods as agreed between Monaco Global and the Client in accordance with clause 5 below.
- 1.9 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

- 2.1 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 the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 Where Monaco Global gives any advice, recommendation, information, assistance or service provided by Monaco Global in relation to Goods or Services supplied is given in good faith to the Client or the Client's agent and is based on Monaco Global's own knowledge and experience and shall be accepted without liability on the part of Monaco Global. Where such advice or recommendations are not acted upon then Monaco Global shall require the Client or their agent to authorise commencement of the Services in writing. Monaco Global shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.5 The Client acknowledges and accepts that:
- (a) the supply of Goods on credit shall not take effect until the Client has completed a credit application with Monaco Global and it has been approved with a credit limit established for the account; and
 - (b) in the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, Monaco Global reserves the right to refuse Delivery; and
 - (c) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods is not or ceases to be available, Monaco Global reserves the right to vary the Charge with alternative Goods as per clause 5.2. Monaco Global also reserves the right to halt all Services until such time as Monaco Global and the Client agree to such changes; and
 - (d) that when the contract period for hire completes under this Contract and payment is not forthcoming when due and payable, then Monaco Global reserves the right at their discretion to leave the Goods erected until such time as payment is effected and the Client shall be liable for all loss hire charges in accordance with clause 21.2(c);
- 2.6 Monaco Global reserves the right to refuse to enter the site to undertake the Services in the event that Monaco Global believes the site to be unsafe. In this event, the Client agrees that it is the Client's responsibility to ensure the site is made safe before Monaco Global will enter the site, Monaco Global shall not be liable for any delays caused, loss, damages, or costs however resulting from an unsafe site.
- 2.7 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.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that Monaco Global 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 Monaco Global 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 Monaco Global in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Monaco Global; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

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4. Change in Control

- 4.1 The Client shall give Monaco Global not less than fourteen (14) 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, change of trustees, or business practice). The Client shall be liable for any loss incurred by Monaco Global as a result of the Client's failure to comply with this clause.

5. Charge and Payment

- 5.1 At Monaco Global's sole discretion, the Charge shall be either:
- (a) as indicated on any invoice provided by Monaco Global to the Client; or
 - (b) the Charge as at the date of Delivery of the Goods according to Monaco Global's current Charge list; or
 - (c) Monaco Global's quoted Charge (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 Monaco Global reserves the right to change the Charge:
- (a) if a variation to the Goods which is to be supplied is requested;
 - (b) if a variation to the Services originally scheduled (including any applicable plans, erection and dismantle charges, site requirements or specifications) is requested;
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather/environmental conditions, limitations to accessing the site, any subsidence of ground conditions, availability of machinery, protruding or dismantled formwork, repositioning or adjusting the Goods, due to sub contractor's moving planks, additional site visits required, safety considerations, prerequisite work by any third party not being completed etc.) which are only discovered on commencement of the Services;
 - (d) in the event of increases to Monaco Global in the cost of labour or materials (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to Monaco Global in the cost of taxes, levies, freight and insurance charges, or delays in shipment etc.) which are beyond Monaco Global's control.
- 5.3 Variations will be charged for on the basis of Monaco Global's quotation, and will be detailed in writing, and shown as variations on Monaco Global's invoice. The Client shall be required to respond to any variation submitted by Monaco Global within ten (10) working days. Failure to do so will entitle Monaco Global to add the cost of the variation to the Charge. Payment for all variations must be made in full at the time of their completion.
- 5.4 At Monaco Global's sole discretion, a non-refundable deposit may be required.
- 5.5 Time for payment for the Goods being of the essence, the Charge will be payable by the Client on the date/s determined by Monaco Global, which may be:
- (a) on Delivery of the Goods;
 - (b) before Delivery of the Goods;
 - (c) by way of instalments/progress payments in accordance with Monaco Global's payment schedule;
 - (d) seven (7) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Monaco Global.
- 5.6 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and Monaco Global.
- 5.7 Monaco Global may in its discretion allocate any payment received from the Client towards any invoice that Monaco Global determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Monaco Global may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Monaco Global, payment will be deemed to be allocated in such manner as preserves the maximum value of Monaco Global's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.8 The Client shall not be entitled to set off against, or deduct from the Charge, any sums owed or claimed to be owed to the Client by Monaco Global nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated the Charge does not include GST. In addition to the Charge, the Client must pay to Monaco Global an amount equal to any GST Monaco Global must pay for any supply by Monaco Global under this or any other agreement for the sale of the Goods. 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 Charge. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Charge except where they are expressly included in the Charge.

6. Provision of the Services

- 6.1 Delivery of the Goods and/or Services ("**Delivery**") is taken to occur at the time that Monaco Global (or Monaco Global's nominated carrier) delivers the Goods and/or Services (in the case of Goods, where it is installed and hand-over certificate is issued) to the Client's nominated address, even if the Client is not present at the address. In the event the Client (or a representative thereof) is not present at the time of Delivery, Monaco Global's delivery docket remains prima facie evidence of such.
- 6.2 Return of the Goods ("**Return**") will be completed when the Goods has been dismantled and accepted by Monaco Global, by their off-hire docket. Where the Goods is returned by the Client's transport, the Goods returned shall be counted in Monaco Global's yard and the off-hire docket issued to the Client shall be conclusive proof of the Return of the quantities of Goods listed thereon, but not of its condition at the time of Return. If the Client collects the Goods, it will be checked on arrival in Monaco Global's yard for quantity and condition. In both cases the check in Monaco Global's yard for quantity and condition will be the only legal proof of the quantity and condition of Goods returned.
- 6.3 The cost of Delivery is in addition to the hire Charges unless otherwise specified by Monaco Global.
- 6.4 Monaco Global may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Any time specified by Monaco Global for Delivery of the Goods is an estimate only and Monaco Global 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 Goods to be delivered at the time and place as was arranged between both parties. In the event that Monaco Global is unable to supply

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the Goods as agreed solely due to any action or inaction of the Client, then Monaco Global shall be entitled to charge a reasonable fee for redelivery and/or storage.

- 6.6 Monaco Global shall not be responsible for delay or non-completion of the job for which the Goods are purchased/hired resulting from an act beyond the reasonable control of Monaco Global, including but not limited to, industrial action, strikes, lockouts, epidemics, fire, war, government actions, commotion, riot, floods or inclement weather.
- 6.7 The Client shall ensure that Monaco Global has clear and free access to the nominated address at all times to enable them to make Delivery. Monaco Global shall not be liable for any loss or damage to the property (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas), unless due to the negligence of Monaco Global.
- 6.8 In the event of Wet Hire, the operator responsible for the Goods remains an employee of Monaco Global and shall erect the Goods in accordance with the Client's instructions. Monaco Global shall not be liable for any actions of the operator in following the Client's instructions.

7. Title

7.1 Where this is a hire Contract:

- (a) the Goods is and will at all times remain the absolute property of Monaco Global, however the Client accepts full responsibility for:
- (i) the safekeeping of the Goods and indemnifies Monaco Global for all loss, theft, or damage to the Goods howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client; and
 - (ii) shall keep Monaco Global indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Goods during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.
- (b) the Client will insure, or self-insure, Monaco Global's interest in the Goods against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will affect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Goods. Further the Client will not use the Goods nor permit it to be used in such a manner as would permit an insurer to decline any claim; and
- (c) the Client is not authorised to pledge Monaco Global's credit for repairs to the Goods or to create a lien over the Goods in respect of any repairs.

7.2 Where this is a Contract for the purchase of the Goods:

- (a) Monaco Global and the Client agree that ownership of the Goods shall not pass until:
- (i) the Client has paid Monaco Global all amounts owing to Monaco Global; and
 - (ii) the Client has met all of its other obligations to Monaco Global.
- (b) It is further agreed that:
- (i) until ownership of the Goods passes to the Client in accordance with clause (a) that the Client is only a bailee of the Goods and must return the Goods to Monaco Global on request.
 - (ii) the Client holds the benefit of the Client's insurance of the Goods on trust for Monaco Global and must pay to Monaco Global the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (iii) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Monaco Global and must pay or deliver the proceeds to Monaco Global on demand.
 - (iv) the Client should not convert or process the Goods 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 Monaco Global and must sell, dispose of or return the resulting product to Monaco Global as it so directs.
 - (v) Monaco Global may recover possession of any Goods in transit whether or not delivery has occurred;
 - (vi) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Monaco Global; and
 - (vii) Monaco Global may commence proceedings to recover the Charges of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

7.3 If the Client fails to return the Goods to Monaco Global then Monaco Global or Monaco Global's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods is situated and take possession of the Goods.

8. Personal Property Securities Act 2009 ("PPSA")

8.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

8.2 Upon assenting to these terms and conditions in writing the Client 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 Goods and/or collateral (account) – being a monetary obligation of the Client to Monaco Global for Services – that have previously been supplied and that will be supplied in the future by Monaco Global to the Client.

8.3 The Client 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 Monaco Global 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 8.3(a)(i) or 8.3(a)(ii);
- (b) indemnify, and upon demand reimburse, Monaco Global 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 charged thereby;

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- (c) not register a financing change statement in respect of a security interest without the prior written consent of Monaco Global;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Monaco Global;
 - (e) immediately advise Monaco Global of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 8.4 Monaco Global 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.
- 8.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.7 Unless otherwise agreed to in writing by Monaco Global, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Client must unconditionally ratify any actions taken by Monaco Global under clauses 8.3 to 8.5.
- 8.9 Subject to any express provisions to the contrary (including those contained in this clause 8), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 8.10 Only to the extent that the hire of the Goods exceeds a two (2) year hire period with the right of renewal shall clause 8 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 8 will apply generally for the purposes of the PPSA.
- 9. Security and Charge**
- 9.1 In consideration of Monaco Global agreeing to supply the Goods, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 9.2 The Client indemnifies Monaco Global from and against all Monaco Global's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Monaco Global's rights under this clause.
- 9.3 The Client irrevocably appoints Monaco Global and each director of Monaco Global as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Client's behalf.
- 10. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 10.1 The Client must inspect the Goods on Delivery and must within seven (7) days of Delivery notify Monaco Global 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 Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Monaco Global to inspect the Goods.
- 10.2 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**).
- 10.3 Monaco Global acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 10.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Monaco Global makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Monaco Global's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 10.5 If the Client is a consumer within the meaning of the CCA, Monaco Global's liability is limited to the extent permitted by section 64A of Schedule 2.
- 10.6 If Monaco Global is required to replace the Goods under this clause or the CCA, but is unable to do so, Monaco Global may refund any money the Client has paid for the Goods.
- 10.7 If the Client is not a consumer within the meaning of the CCA, Monaco Global's liability for any defect or damage in the Goods is:
(a) limited to the value of any express warranty or warranty card provided to the Client by Monaco Global at Monaco Global's sole discretion;
(b) limited to any warranty to which Monaco Global is entitled, if Monaco Global did not manufacture the Goods;
(c) otherwise negated absolutely.
- 10.8 Subject to this clause 10, returns will only be accepted provided that:
(a) the Client has complied with the provisions of clause 10.1; and
(b) Monaco Global has agreed that the Goods are defective; and
(c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 10.9 Notwithstanding clauses 10.1 to 10.8 but subject to the CCA, Monaco Global 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 Client failing to properly maintain or store any Goods;
(b) the Client using the Goods for any purpose other than that for which they were designed;
(c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
(d) the Client failing to follow any instructions or guidelines provided by Monaco Global;
(e) fair wear and tear, any accident, or act of God.
- 10.10 In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to Delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Monaco Global 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 Monaco Global has agreed to provide the Client with the second hand Goods and calculated the Charge of the second hand Goods in reliance of this clause 10.10.

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- 10.11 Monaco Global may in its absolute discretion accept non-defective Goods for return in which case Monaco Global may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 10.12 Notwithstanding anything contained in this clause if Monaco Global is required by a law to accept a return then Monaco Global will only accept a return on the conditions imposed by that law.
- 10.13** The Customer understands and that all timber 'Goods' supplied are a natural product and therefore may;
- Be prone to expansion and contraction, bending and swelling because of exposure to the elements (sun, rain, humidity, etc.)
 - Mark or stain because of a chemical reaction
 - Be prone to grain raising due to moisture penetration and extreme weather exposure
- The Customer also understands and agrees that plywood 'Goods':
- are not waterproof and that water penetration and absorption leading to film face blistering or splitting is possible after exposure to rain, sun, and humidity.
- The Customer agrees to examine all relevant MSDS applicable to the goods supplied and acknowledges that Monaco Global shall not be held liable for any loss, damage or costs arising due to any faults.

11. Intellectual Property

- 11.1 Where Monaco Global has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Monaco Global. Under no circumstances may such designs, drawings and documents be used without the express written approval of Monaco Global.
- 11.2 The Client warrants that all designs, specifications or instructions given to Monaco Global will not cause Monaco Global to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Monaco Global against any action taken by a third party against Monaco Global in respect of any such infringement.
- 11.3 The Client agrees that Monaco Global may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Monaco Global has created for the Client.

12. Default and 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 a half percent (2.5%) per calendar month (and at Monaco Global's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 If the Client owes Monaco Global any money the Client shall indemnify Monaco Global from and against all costs and disbursements incurred by Monaco Global in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Monaco Global's contract default fee, and bank dishonour fees).
- 12.3 Further to any other rights or remedies Monaco Global may have under this Contract, if a Client has made payment to Monaco Global, 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 Monaco Global under this clause 12 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 12.4 Without prejudice to Monaco Global's other remedies at law Monaco Global shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Monaco Global shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Monaco Global becomes overdue, or in Monaco Global's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by Monaco Global;
 - (c) 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

13. Cancellation

- 13.1 Without prejudice to any other remedies Monaco Global may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Monaco Global may suspend or terminate the supply of Goods to the Client. Monaco Global will not be liable to the Client for any loss or damage the Client suffers because Monaco Global has exercised its rights under this clause.
- 13.2 Monaco Global may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Monaco Global shall repay to the Client any money paid by the Client for the Goods. Monaco Global shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.3 In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Monaco Global as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 13.4 Cancellation of orders for Goods 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.

14. Building and Construction Industry Security of Payments Act 1999

- 14.1 At Monaco Global's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 14.2 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.

15. Compliance with Laws

- 15.1 The Client and Monaco Global shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.

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- 15.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 15.3 The Client agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 16. Privacy Policy**
- 16.1 All emails, documents, images or other recorded information held or used by Monaco Global is Personal Information, as defined and referred to in clause 16.3, and therefore considered Confidential Information. Monaco Global acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 (“the Act”) including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area (“EEA”), under the EU Data Privacy Laws (including the General Data Protection Regulation “GDPR”) (collectively, “EU Data Privacy Laws”). Monaco Global acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by Monaco Global that may result in serious harm to the Client, Monaco Global will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 16.2 Notwithstanding clause 16.1, privacy limitations will extend to Monaco Global in respect of Cookies where transactions for purchases/orders transpire directly from Monaco Global’s website. Monaco Global agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client’s:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Monaco Global when Monaco Global sends an email to the Client, so Monaco Global may collect and review that information (“collectively Personal Information”)
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Monaco Global’s website.
- 16.3 The Client agrees for Monaco Global to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by Monaco Global.
- 16.4 The Client agrees that Monaco Global may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the 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 creditworthiness of the Client including the Client’s repayment history in the preceding two (2) years.
- 16.5 The Client consents to Monaco Global being given a consumer credit report to collect overdue payment on commercial credit.
- 16.6 The Client agrees that personal credit information provided may be used and retained by Monaco Global for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client’s credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 16.7 Monaco Global may give information about the Client 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 Client including credit history.
- 16.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 16.3 above;
 - (b) name of the credit provider and that Monaco Global is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client’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 the Client no longer has any overdue accounts and Monaco Global has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of Monaco Global, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client’s overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 16.9 The Client shall have the right to request (by e-mail) from Monaco Global:
- (a) a copy of the Personal Information about the Client retained by Monaco Global and the right to request that Monaco Global correct any incorrect Personal Information; and
 - (b) that Monaco Global does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 16.10 Monaco Global will destroy Personal Information upon the Client’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.
- 16.11 The Client can make a privacy complaint by contacting Monaco Global via e-mail. Monaco Global 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.

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In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

17. Service of Notices

- 17.1 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.
- 17.2 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.

18. Trusts

- 18.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Monaco Global may have notice of the Trust, the Client covenants with Monaco Global as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client 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 Client against the Trust or the trust fund. The Client 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 Client will not without consent in writing of Monaco Global (Monaco Global will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client 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.

19. General

- 19.1 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.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which Monaco Global has its principal place of business, and are subject to the jurisdiction of the Parramatta Courts in that state.
- 19.3 Subject to clause 10, Monaco Global 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 Monaco Global of these terms and conditions (alternatively Monaco Global's liability shall be limited to damages which under no circumstances shall exceed the Charge of the Goods).
- 19.4 Monaco Global may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 19.5 The Client cannot licence or assign without the written approval of Monaco Global.
- 19.6 Monaco Global may elect to subcontract out any part of the Services 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 Monaco Global's sub-contractors without the authority of Monaco Global.
- 19.7 The Client agrees that Monaco Global may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to 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 Monaco Global to provide Goods to the Client.
- 19.8 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.
- 19.9 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.

20. Terms Specifically Applicable to the Installation and/or Dismantle of the Goods by Monaco Global

20.1 Client's Responsibilities:

- (a) the Client shall provide (free of charge) to Monaco Global:
 - (i) adequate foundations for the erection of the Goods that will satisfactorily support the loads to be imposed;
 - (ii) sufficient and suitable storage space adjacent to the nominated installation position to allow the depositing of the Goods;
 - (iii) suitable site access roads to allow fully laden trucks of the Goods to be transported and positioned adjacent to the nominated installation position;
 - (iv) adequate welfare facilities for Monaco Global's employees (including, dressing, drying and toilet accommodation) within reasonable distance from the point of the installation position;
 - (v) labour and plant for the off-loading of the Goods at points adjacent to the nominated installation position and/or reloading the Goods onto transport provided under this Contract. Monaco Global's employees and those of any transport company, or labour-only subcontractor it employs, are not responsible for the unloading and/or reloading of the Goods at the site and will not assist in the same;
 - (vi) on-site plant and transport to move the Goods between the various nominated installation positions as required;
 - (vii) adequate safe storage for the Goods' pallets and bins during the Hire Period;
 - (viii) setting-out engineers, who shall be responsible for the correct location of the temporary structures, inspection and who will accept the handover of the completed Services or parts thereof;

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- (ix) acknowledgement of the completion and handover of the Services or parts thereof by signing Monaco Global's Handover Certificate, and such handover shall take place following a joint inspection of the Services or parts thereof by both parties.
- (b) The Client shall:
 - (i) provide Monaco Global a minimum of three (3) full working days' notice to arrange for the installation and/or dismantle of the Goods. The Client will be charged for any dismantle of the Goods by any other party;
 - (ii) ensure all overhead power likely to cause a hazard or adversely affect the erection of the Goods is turned off prior to commencement thereof;
 - (iii) ensure that any temporary works erected by Monaco Global are not tampered with, dismantled or subjected to damage through their actions or others for whom they are responsible. Any costs of rectification shall be at the Client's expense.

20.2 *Monaco Global's Responsibilities:*

- (a) Monaco Global shall:
 - (b) provide all scaffold boards and safety equipment, such as safety harnesses and other personal protection equipment, for the safe execution of the Services;
 - (c) prepare and provide all necessary method statements for the approval by the Client in advance of commencing the Services, or any part thereof;
 - (d) provide the necessary contract management staff and site supervision to ensure the proper administration of this Contract;
 - (e) engage only suitably experienced labour-only subcontractors to undertake the Services under its direct supervision;
 - (f) submit daily labour and plant returns as may be required by the Client;

20.3 *Limitation of Liability:*

- (a) Monaco Global shall exercise reasonable skill and care to ensure that the execution of the Services satisfies the Client's requirements, however Monaco Global shall have no liability for any alleged failure to execute the Services arising out of or in connection with:
 - (i) any inaccurate, incomplete, conflicting or ambiguous information, drawing, design or specification supplied by the Client and used by Monaco Global as the basis for Services to be executed;
 - (ii) wilful damage, unless caused by Monaco Global;
 - (iii) negligence, save for Monaco Global's negligence;
 - (iv) abnormal working conditions;
 - (v) failure of the Client to follow Monaco Global's instructions, whether oral or in writing;
 - (vi) misuse or alteration or repair of the Goods supplied under this Contract without Monaco Global's approval; or
 - (vii) parts, materials or equipment not being supplied by the Client to Monaco Global where the Services are contingent on such supply thereof by the Client.
- (b) The Client shall indemnify and insure Monaco Global for:
 - (i) any expense, liability, loss, claim or proceedings whatsoever arising under statute or at common law in respect of any personal injury or damage whatsoever to any property other than the Services in so far as such injury or damage arises out of or in the course of or by reason of carrying out the Services due to any negligence, act, omission or default of the Client or the Client's principal, servants, agents or any person for whom the Client is responsible.
 - (ii) Monaco Global in respect of Monaco Global's obligations to reinstate loss or damage to the Services, temporary works, materials, equipment (including Goods hired or sold hereunder) or other property for use in connection therewith for their full reinstatement value from leaving Monaco Global's premises until the return of the said Goods and materials and other property to Monaco Global's premises.

21. Terms Specifically Applicable to the Hire of Goods Only

21.1 *Hire Period:*

- (a) The Hire Period shall:
 - (i) commence from the time the Goods depart from Monaco Global's premises, and will continue until the return of the Goods to Monaco Global's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs. Additional charges will apply in the event that the Client requests an extension of the Hire Period;
 - (ii) be based on a weekly (being seven (7) days) or monthly (calendar month) cycle.
- (b) The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- (c) No allowance whatever can be made for time during which the Goods are not in use for any reason, unless Monaco Global confirms special prior arrangements in writing. In the event of breakdown of the Goods, provided the Client notifies Monaco Global immediately, hire charges will not be payable during the time the Goods are not functional, unless the condition is due to negligence or misuse on the part of or attributable to the Client.

21.2 *Client's Obligations:*

- (a) The Client shall:
 - (i) satisfy itself on Delivery that the Goods are suitable for its purposes;
 - (ii) inspect the Goods every seven (7) days, and immediately after severe storms or other adverse conditions;
 - (iii) maintain the Goods as is required by Monaco Global;
 - (iv) notify Monaco Global immediately by telephone of the full circumstances of any mechanical malfunction, damage, loss, destruction or accident in connection with the Goods. The Client is not absolved from the requirements to safeguard the Goods by giving such notification.
 - (v) use the Goods safely, strictly in accordance with the law (in full compliance with all health and safety regulations relating to their use and any other relevant laws and regulations), only for their intended use, and in accordance with any manufacturer's instruction, whether supplied by Monaco Global or posted on the Goods;
 - (vi) ensure the security and safekeeping of the Goods whilst being used, and that all persons who use the Goods are competent and qualified to use the Goods as required by current Occupational Safety and Health Guidelines;
 - (vii) keep the Goods in their own possession and control and shall not assign the benefit of this hire contract nor be entitled to take a lien, or grant any encumbrance over the Goods. This does not prevent the employees of the Client using the Goods;

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- (viii) not alter or make any additions to the Goods (including, but without limitation, altering, make any additions to, defacing or erasing any identifying mark, plate or number on the Goods), or in any other manner interfere with the Goods, as doing so may undermine the structure and safety of the Goods. Monaco Global will photograph, in detail, the Goods once erected as proof of this;
- (ix) where wooden planks are used, ensure that no person shall cut, nail or drill into the planks, as in doing so will weaken them and shorten their life.
- (x) ensure that no digging or excavation work is performed near or under the Goods during the erection or once the Goods are erected;
- (xi) employ the Goods solely in their own work and not permit the Goods (or any part thereof) to be used by any other party for any other work;
- (xii) not exceed the recommended or legal load and capacity limits of the Goods;
- (xiii) not use or place any illegal, prohibited or dangerous substance on the Goods;
- (xiv) not fix the Goods (or any part thereof) in such a manner as to make them legal fixtures forming part of any freehold;
- (xv) on termination of the hire, deliver up the Goods, complete with all parts and accessories, clean and in good order, as delivered, fair wear and tear accepted, to Monaco Global.

(b) Immediately on request by Monaco Global the Client will pay:

- (i) the new list Charges of any Goods (or any part thereof) that are, for whatever reason, destroyed, irrecoverable, or not returned to Monaco Global;
- (ii) all costs incurred in cleaning the Goods (including removing plaster, mortar, cement and/or concrete from the Goods) if the Goods are deemed by Monaco Global (at their sole discretion) to be excessively dirty;
- (iii) all costs of repairing any damage to the Goods caused by:
 - (A) the ordinary use of the Goods up to an amount equal to 10% of the new list Charges of the Goods;
 - (B) caused by the negligence of the Client or the Client's agent;
 - (C) caused by vandalism, or (in Monaco Global's reasonable opinion) in any way whatsoever other than by the ordinary use of the Goods by the Client;

(c) any lost hire charges Monaco Global would have otherwise been entitled to for the Goods, under this, or any other hire Contract;

(d) the cost of fuels and consumables provided by Monaco Global and used by the Client.

21.3 No warranty is given by Monaco Global as to the quality or suitability of the Goods for any purpose, and any implied warranty is expressly excluded. The Client shall indemnify and hold harmless Monaco Global in respect of all claims arising out of the use of the Goods.

22. Inspection of Goods

22.1 The Client hereby grants Monaco Global (including its employees, duly authorised agents or representatives) the right, at all times, upon Monaco Global giving to the Client reasonable notice and without unduly interfering with the Client's business or operations, to:

- (a) enter onto the site(s) where the Goods or any part thereof may be located;
- (b) inspect the state of repair or condition of the Goods;
- (c) carry out any such tests on the Goods as may be reasonably necessary including but not limited to, health and safety tests or inspections;
- (d) observe the use of the Goods by the Client; and
- (e) do any act, matter or thing which may be required at law or to otherwise protect Monaco Global's rights or interests in the Goods.

23. Affixation of Goods to Land or Buildings

23.1 If the Goods or any part thereof is affixed to any land or buildings pursuant to this Contract, and the land or buildings are or become the subject of a mortgage or charge whether under the PPSA or otherwise at law, then the Client shall, without first receiving any request from Monaco Global, obtain the written acknowledge of the mortgagee or chargeholder (as the case may be) that:

- (a) the Goods or any part thereof is not a fixture for the purposes of the mortgage or charge;
- (b) that the mortgagee or chargeholder will not make any claim in relation to the Goods or any part therefore; and
- (c) that the mortgagee or chargeholder will permit Monaco Global (whether or not there has been any default under the mortgage or charge) to enter upon the land or buildings and to remove the Goods or part thereof.

24. Terms Specifically Applicable to the Sale of Goods Only

24.1 *Risk:*

- (a) Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- (b) If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, Monaco Global is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Monaco Global is sufficient evidence of Monaco Global's rights to receive the insurance proceeds without the need for any person dealing with Monaco Global to make further enquiries.
- (c) If the Client requests Monaco Global to leave Goods outside Monaco Global'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.

24.2 *Warranty:*

- (a) The warranty shall be the current warranty provided by the manufacturer of the Goods. Monaco Global shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.