

Eco Awnings Pty Ltd – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Eco to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, including:</p> <p>(a) if there is more than one Client, is a reference to each Client jointly and severally; and</p> <p>(b) if the Client is a partnership, it shall bind each partner jointly and severally; and</p> <p>(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and</p> <p>(d) includes the Client's executors, administrators, successors and permitted assigns.</p> <p>1.2 "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.</p> <p>1.3 "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.</p> <p>1.4 "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 using Eco's 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 making enquiries via the website.</p> <p>1.5 "Eco" means Eco Awnings Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Eco Awnings Pty Ltd.</p> <p>1.6 "GST" means Goods and Services Tax as defined within the A New Tax System (Goods and Services Tax) Act 1999 (Cth).</p> <p>1.7 "Intended Use" means a building product and the use thereof, for which the building product is intended to be, or is reasonably likely to be, associated with a building.</p> <p>1.8 "Non-Conforming Building Product" means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:</p> <p>(a) the product is not, or will not be, safe; or</p> <p>(b) does not, or will not, comply with the relevant regulatory provisions; or</p> <p>(c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.</p> <p>1.9 "Price" means the Price payable (plus any GST where applicable) for the Works as agreed between Eco and the Client in accordance with clause 6 below.</p> <p>1.10 "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by Eco 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).</p> <p>1.11 "Worksite" means the address nominated by the Client to which the Materials are to be supplied by Eco.</p> <p>2. Acceptance</p> <p>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 any Works.</p> <p>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.</p> <p>2.3 Any amendments to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.</p> <p>2.4 The Client acknowledges and accepts that:</p> <p>(a) the supply of Works on credit shall not take effect until the Client has completed a credit application with Eco and it has been approved with a credit limit established for the account; and</p> <p>(b) in the event that the supply of Works requested exceeds the Client's credit limit and/or the account exceeds the payment terms, Eco reserves the right to refuse delivery; and</p> <p>(c) the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, Eco reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 6.2. In all such cases Eco will notify the Client in advance of any such substitution, and also reserves the right to place the Client's order and/or Works on hold as per clause 7.2 until such time as Eco and the Client agree to such changes.</p> <p>2.5 Any advice, recommendation, information, assistance or service provided by Eco in relation to the Materials or Works supplied is given in good faith to the Client, or the Client's agent and is based on Eco's own knowledge and experience and shall be accepted without liability on the part of Eco. Where such advice or recommendations are not acted upon then Eco shall require the Client or their agent to authorise commencement of the Works in writing. Eco shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.</p> <p>2.6 In the event that Eco is required to provide the Works urgently or after the Warranty has expired, then Eco reserves the right to charge the Client a minimum call out fee based on Eco's standard hourly labour rate, plus travel, plus Materials, unless otherwise agreed between Eco and the Client.</p> <p>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.</p> <p>3. Errors and Omissions</p> <p>3.1 The Client acknowledges and accepts that Eco shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):</p> <p>(a) resulting from an inadvertent mistake made by Eco in the formation and/or administration of this Contract; and/or</p> <p>(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Eco in respect of the Works.</p> <p>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 willful misconduct of Eco, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.</p> <p>3.3 In circumstances where the Client is required to place an order for Materials, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Materials (whether they are made to order Materials or not) ("Client Error"). The Client must pay for all Materials it orders from Eco notwithstanding that such Materials suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take delivery of such Materials. Eco is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client's Errors.</p> <p>4. Change in Control</p> <p>4.1 The Client shall give Eco 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, change of trustees, or business structure). The Client shall be liable for any loss incurred by Eco as a result of the Client's failure to comply with this clause.</p> <p>5. Exclusions to Price</p> <p>5.1 Unless otherwise agreed to, the Price does not include an allowance for:</p> <p>(a) architects;</p> <p>(b) engineering certification;</p> <p>(c) workers' compensation insurance;</p> <p>(d) traffic control; or</p> <p>(e) scaffolding, boom lift or other equipment.</p> <p>6. Price and Payment</p> <p>6.1 At Eco's sole discretion the Price shall be either:</p> <p>(a) as indicated on invoices provided by Eco to the Client in respect of Works performed or Materials supplied; or</p> <p>(b) Eco's quoted Price (subject to clause 6.2) which shall be binding upon Eco provided that the Client shall accept Eco's quotation in writing within ninety (90) days.</p> <p>6.2 Eco reserves the right to change the Price:</p> <p>(a) if a variation to the Materials which are to be supplied is requested; or</p> <p>(b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or</p> <p>(c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite, obscured building/Worksite defects, incorrect measurements, plans and/or specifications provided by the Client, as a result of delays from third party suppliers, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, change of design, iron reinforcing rods in concrete or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Works; or</p> <p>(d) in the event of increases to Eco in the cost of labour or Materials which are beyond Eco's control.</p> <p>6.3 Variations will be charged for on the basis of Eco's quotation, and will be detailed in writing, and shown as variations on Eco's invoice. The Client shall be required to respond to any variation submitted by Eco within ten (10) working days. Failure to do so will entitle Eco 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.</p> <p>6.4 At Eco's sole discretion, a non-refundable deposit may be required.</p> <p>6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Eco, which may be:</p> <p>(a) before commencement of the Works; or</p> <p>(b) on completion of the Works; or</p> <p>(c) by way of progress payments in accordance with Eco's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the Worksite but not yet installed; or</p> <p>(d) the date specified on any invoice or other form as being the date for payment; or</p> <p>(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Eco.</p> <p>6.6 Payment may be made by cheque, bank deposit, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Eco.</p> <p>6.7 Eco may in its discretion allocate any payment received from the Client towards any invoice that Eco determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Eco may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Eco, payment will be deemed to be allocated in such manner as preserves the maximum value of Eco's Purchase Money Security Interest (as defined in the PPSA) in the Materials.</p> <p>6.8 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 Eco nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify Eco in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as Eco investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in Eco placing the Client's account into default and subject to default interest in accordance with clause 18.1.</p> <p>6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Eco an amount equal to any GST Eco must pay for any supply by Eco under this or any other Contract 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.</p> <p>7. Provision of the Works</p> <p>7.1 Subject to clause 6, it is Eco's responsibility to ensure that the Works start as soon as it is reasonably possible.</p> <p>7.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Eco claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Eco's control, including but not limited to any failure by the Client to:</p> <p>(a) make a selection; or</p> <p>(b) make the Worksite ready for the Works; or</p> <p>(c) notify Eco that the Worksite is ready.</p> <p>7.3 At Eco's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.</p> <p>7.4 Eco 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.</p> <p>7.5 Any time specified by Eco for delivery of the Works is an estimate only and Eco 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 Eco is unable to supply the Works as agreed solely due to any action or inaction of the Client, then Eco 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.</p> <p>8. Risk</p> <p>8.1 If Eco retains ownership of the Materials under clause 13 then:</p> <p>(a) where Eco 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 the materials are delivered by Eco or Eco's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address); and</p> <p>(b) where Eco is to both supply and install Materials then Eco shall maintain a Contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.</p> <p>8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests Eco to leave Materials on Eco'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.</p> <p>8.3 Eco shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Eco accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.</p> <p>8.4 Where Eco is required to install the Materials the Client warrants that the structure of the premises or equipment or in upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and Eco shall not be liable for any claims, demands, losses, damages and expenses howsoever caused or arising in connection with the installation and work incidental thereto.</p> <p>8.5 The Client acknowledges and accepts that Materials supplied may exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations which may:</p> <p>(a) fade or change colour over time;</p> <p>(b) expand, contract or distort as a result of exposure to heat, cold, or water; or</p> <p>(c) mark or stain if exposed to certain substances; and</p> <p>(d) be damaged or disfigured by impact or scratching.</p> <p>8.6 Timber is a hygroscopic material, subject to expansion and contraction, therefore Eco will accept no responsibility for gaps that may appear in the Works during prolonged dry periods.</p> <p>9. Worksite Access and Condition</p> <p>9.1 Eco is not responsible for the removal of rubbish from or clean-up of the building/construction Worksite/s. All rubbish generated by Eco will be placed in a designated area appointed by the Client but the responsibility of removal of same is the Client or the Client's agent, unless otherwise agreed.</p> <p>9.2 It is the intention of Eco and agreed by the Client that:</p> <p>(a) the Client shall ensure that Eco has clear and free access to the Worksite at all times to enable Eco to undertake the Works (including carrying out Works inspections, obtain signatures for required documents, and for the delivery and installation of the Works). Eco shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways,</p>	<p>driveways and concreted or paved or grassed areas) unless due to the negligence of Eco;</p> <p>(b) such access is suitable to accept the weight of laden trucks, front end loaders or other loading/unloading equipment as may be deemed necessary by Eco. The Client agrees to indemnify Eco against all costs incurred by Eco in recovering such vehicles in the event they become bogged or otherwise immovable;</p> <p>(c) access for repairs at heights greater than standard step ladder reach is to be provided by the Client and must comply with Work Cover standards as per clause 9.2(d);</p> <p>(d) it is the responsibility of the Client to provide and have erected scaffolding (or boom lift, or similar) to enable the Works to be undertaken (where applicable). It is deemed necessary. It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed; and</p> <p>(e) it is the Client's responsibility to provide Eco, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities where required.</p> <p>9.3 Where Eco requires that Materials, tools etc. required for the Works be stored at the Worksite, the Client shall supply Eco a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.</p> <p>9.4 The Client agrees to be present at the Worksite when and as reasonably requested by Eco and its employees, contractors and/or agents.</p> <p>9.5 Worksite Inductions</p> <p>(a) in the event the Client requires an employee or sub-contractor of Eco to undertake a Worksite induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to pay Eco's standard (and/or market) applicable hourly labour rate; or</p> <p>(b) where Eco is in control of the Worksite, the Client and/or the Client's third-party contractors must initially carry out Eco's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by appointment only and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by Eco.</p> <p>10. Underground Locations</p> <p>10.1 Prior to Eco commencing any work the Client must advise Eco of the precise location of all underground services on the Worksite and clearly mark the same. The underground mains and 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 the Worksite. Whilst Eco will take all care to avoid damage to any underground services the Client agrees to indemnify Eco 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 10.1.</p> <p>11. Compliance with Laws</p> <p>11.1 The Client and Eco shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including any work health and safety laws (WHS) relating to any other relevant safety standards or legislation pertaining to the Works.</p> <p>11.2 Both parties acknowledge and agree:</p> <p>(a) to comply with the National Construction Code of Australia (NCC) and the Building Products (Safety) Act 2017, in respect of all workmanship and building products to be supplied during the course of the Works; and</p> <p>(b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.</p> <p>11.3 Where the Client has supplied products for Eco to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in Eco's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with state and/or territory regulations, then Eco shall be entitled, without prejudice, to halt the Works until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 6.2.</p> <p>11.4 The Client shall obtain (at the expense of the Client) all licenses and approvals (including Body Corporate where applicable) that may be required for the Works.</p> <p>12. Modern Slavery</p> <p>12.1 For the purposes of this clause:</p> <p>(a) "Act" means the <i>Modern Slavery Act 2018 (cth)</i></p> <p>(b) "Modern Slavery", "Modern Slavery Statement" and "Reporting Entity" have the meanings given by the Act.</p> <p>12.2 If the Client is a Reporting Entity, it shall comply with all of its obligations under the Act.</p> <p>12.3 Whether the Client is a Reporting Entity or not, the Client shall:</p> <p>(a) use reasonable endeavours to identify, assess and address risks of Modern Slavery practices in its operations and supply chains;</p> <p>(b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;</p> <p>(c) use its reasonable endeavours to ensure that if at any time the Client becomes aware of Modern Slavery practices in its operations and supply chains, the Client must as soon as reasonably practicable take all reasonable steps to address or remove these practices;</p> <p>(d) provide to Eco a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and</p> <p>(e) within seven (7) days of Eco's request (or such longer period as Eco agrees), provide to Eco any information or assistance reasonable requested by Eco:</p> <p>(i) concerning the Client's compliance with the Act;</p> <p>(ii) concerning the Client's operations and supply chains;</p> <p>(iii) to enable Eco to prepare a Modern Slavery Statement or otherwise comply with the Act; or</p> <p>(iv) to enable Eco to assess and address risks of Modern Slavery practices in its operations and supply chains.</p> <p>12.4 The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and Eco will be able to terminate the Contract for any breach by the Client.</p> <p>12.5 The Client warrants that any information supplied to Eco is true and accurate and may be relied upon for the purposes of the Act.</p> <p>12.6 The Client shall indemnify Eco against any loss or liability suffered by Eco as a result of the Client's breach of this clause 12.</p> <p>13. Title</p> <p>13.1 Eco and the Client agree that ownership of the Materials shall not pass until:</p> <p>(a) the Client has paid Eco all amounts owing to Eco; and</p> <p>(b) the Client has met all of its other obligations to Eco.</p> <p>13.2 Receipt by Eco 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.</p> <p>13.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 13.1:</p> <p>(a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Eco on request;</p> <p>(b) the Client holds the benefit of the Client's insurance of the Materials on market value. If the Client must pay to Eco the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;</p> <p>(c) the production of these terms and conditions by Eco shall be sufficient evidence of Eco's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Eco to make further enquiries;</p> <p>(d) 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 must pay to Eco the proceeds of any insurance in the event of the Materials then the Client must hold the proceeds of any such act on trust for Eco and must pay or deliver the proceeds to Eco on demand;</p>
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Signed (client)

Date

Signed (client)

Date

Eco Awnings Pty Ltd – Terms & Conditions of Trade

<p>(e) 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 Eco and must sell, dispose of or return the resulting product to Eco as its sole direct; unless the Client has the fixtures the Client irrevocably authorises Eco to enter any premises where Eco believes the Materials are kept and recover possession of the Materials;</p> <p>(g) Eco may recover possession of any Materials in transit whether or not delivery has occurred;</p> <p>(h) 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 Eco;</p> <p>(i) Eco may contract to purchase the Materials at the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.</p> <p>14. Personal Property Securities Act 2009 ("PPSA") 14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA. 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 Materials and/or collateral (account) – being a monetary obligation of the Client to Eco for Works – that have previously been supplied and that will be supplied in the future by Eco to the Client.</p> <p>14.3 The Client undertakes to:</p> <p>(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 Eco may reasonably require to:</p> <p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 14.3(a)(i) or (ii);</p> <p>(b) indemnify, and upon demand reimburse, Eco for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of Eco;</p> <p>(d) not register or permit to be registered a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of Eco;</p> <p>(e) immediately advise Eco of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.</p> <p>14.4 Eco 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.</p> <p>14.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.</p> <p>14.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>14.7 Unless otherwise agreed to in writing by Eco, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>14.8 The Client shall unconditionally ratify any actions taken by Eco under clauses 14.3 to 14.5.</p> <p>14.9 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>15. Security and Charge 15.1 In consideration of Eco agreeing to supply the Materials, the Client charges all of its assets, 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, and the Client grants a security interest in all of its present and after-acquired property for the purposes of, including but not limited to registering Eco's security interest over the Client on the PPSA, 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).</p> <p>15.2 The Client indemnifies Eco from and against all Eco's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Eco's rights under this clause.</p> <p>15.3 The Client irrevocably appoints Eco and each director of Eco as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.</p> <p>16. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA") 16.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within fourteen (14) days of delivery notify Eco 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 Eco to inspect the Materials or to review the Works provided.</p> <p>16.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).</p> <p>16.3 Eco acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Eco makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. Eco's liability in respect of these warranties is limited to the fullest extent permitted by law.</p> <p>16.5 If the Client is a consumer within the meaning of the CCA, Eco's liability is limited to the extent permitted by section 64A of Schedule 2 of the CCA, but is unable to do so, Eco may refund any money the Client has paid for the Materials.</p> <p>16.6 If Eco is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause of the CCA, but is unable to do so, then Eco 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.</p> <p>16.8 If the Client is not a consumer within the meaning of the CCA, Eco's liability for any defect or damage in the Materials is:</p> <p>(a) limited to the value of any express warranty or warranty card provided to the Client by Eco at Eco's sole discretion;</p> <p>(b) limited to any warranty to which Eco is entitled, if Eco did not manufacture the Materials;</p> <p>(c) otherwise negated absolutely.</p> <p>16.9 Subject to this clause 16, returns will only be accepted provided that:</p> <p>(a) the Client has complied with the provisions of clause 16.1, and</p> <p>(b) Eco has agreed that the Materials are defective; and</p> <p>(c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and</p> <p>(d) the Materials are returned in as close a condition to that in which they were delivered as is possible.</p> <p>16.10 Notwithstanding clauses 16.1 to 16.9 but subject to the CCA, Eco shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:</p> <p>(a) the Client failing to properly maintain or store any Materials;</p> <p>(b) the Client using the Materials for any purpose other than that for which they were designed;</p> <p>(c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;</p> <p>(d) interference with the Works by the Client or any third party without Eco's prior approval;</p> <p>(e) the Client failing to follow any instructions or guidelines provided by Eco;</p> <p>(f) fair wear and tear, any accident, or act of God.</p> <p>16.11 The Client acknowledges and accepts that repairs performed by non-authorised agents will void the warranty unless approved by Eco prior to the commencement of such repairs.</p> <p>16.12 The warranty is available to the first initial end consumer only and thereafter becomes non-transferable.</p> <p>16.13 Any warranty applicable applies to the Materials only and does not apply to any ancillary components of installation including, but not limited to, faulty structures that those Materials are attached to.</p>	<p>17. Intellectual Property 17.1 Where Eco 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 Eco, and shall only be used by the Client at Eco's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of Eco.</p> <p>17.2 The Client warrants that all designs, specifications or instructions given to Eco will not cause Eco to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Eco against any action taken by a third party against Eco in respect of any such infringement.</p> <p>17.3 The Client agrees that Eco may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which Eco has created for the Client.</p> <p>18. Default and Consequences of Default 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Eco's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>18.2 If the Client owes Eco any money, the Client shall indemnify Eco from and against all costs and disbursements:</p> <p>(a) incurred and/or</p> <p>(b) which would be incurred and/or</p> <p>(c) for which by the Client would be liable;</p> <p>in regard to legal costs on a solicitor and own client basis, internal administration fees, Eco's Contract fees owing for breach of these terms and conditions, including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.</p> <p>18.3 Further to any other rights or remedies Eco may have under this Contract, if a Client has made a payment to Eco, 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 Eco under this clause 18 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. Without prejudice to Eco's other remedies at law Eco shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled, and all amounts owing to Eco shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to Eco becomes overdue, or in Eco's opinion the Client will be unable to make a payment when it falls due;</p> <p>(b) the Client has exceeded any applicable credit limit provided by Eco;</p> <p>(c) 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</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p> <p>19. Cancellation 19.1 Without prejudice to any other remedies Eco may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Eco may suspend or terminate the supply of Works to the Client. Eco will not be liable to the Client for any loss or damage the Client suffers because Eco has exercised its rights under this clause.</p> <p>19.2 Eco 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 Eco shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Eco for Works already performed. Eco shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>19.3 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 Eco as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>19.4 Cancellation of orders for products made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>20. Privacy Policy 20.1 All emails, documents, images or other recorded information held or used by Eco is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. Eco 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 IIC 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"). Eco acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Eco that may result in serious harm to the Client, Eco 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.</p> <p>20.2 Notwithstanding clause 20.1, privacy limitations will extend to Eco in respect of Cookies where the Client utilises Eco's website to make enquiries. Eco 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:</p> <p>(a) IP address, browser, email client type and other similar details;</p> <p>(b) tracking website usage and traffic; and</p> <p>(c) reports are available to Eco when Eco sends an email to the Client, so Eco may collect and review that information (collectively "Personal Information").</p> <p>If the Client consents to Eco's use of Cookies on Eco's website and later wishes to withdraw that consent, the Client may manage and control Eco's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.</p> <p>20.3 The Client agrees for Eco 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 Eco.</p> <p>20.4 The Client agrees that Eco may exchange information about the Client with those credit providers and with related body corporates for the following purposes:</p> <p>(a) to assess an application by the Client; and/or</p> <p>(b) to notify other credit providers of a default by the Client; and/or</p> <p>(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</p> <p>(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.</p> <p>20.5 The Client consents to Eco being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.</p> <p>20.6 The Client agrees that personal credit information provided may be used and retained by Eco for the following purposes (and for other agreed purposes or required by):</p> <p>(a) the provision of Works; and/or</p> <p>(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or</p> <p>(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or</p> <p>(d) enabling the collection of amounts outstanding in relation to the Client's Works.</p> <p>20.7 Eco may give information about the Client to a CRB for the following purposes:</p> <p>(a) to obtain a consumer credit report;</p> <p>(b) allow the CRB to create or maintain a credit information file about the Client including credit history.</p> <p>20.8 The information given to the CRB may include:</p> <p>(a) Personal Information as outlined in 20.3 above;</p> <p>(b) the name of the credit provider and that Eco is a current credit provider to the Client;</p> <p>(c) whether the credit provider is a licensee;</p> <p>(d) type of consumer credit.</p>	<p>(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);</p> <p>(f) advice of consumer credit defaults (provided Eco is a member of an approved OAIC External Disputes Resolution Scheme), 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 Eco has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);</p> <p>(g) information that, in the opinion of Eco, the Client has committed a serious credit infringement;</p> <p>(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).</p> <p>20.9 The Client shall have the right to request (by e-mail) from Eco:</p> <p>(a) a copy of the Personal Information about the Client retained by Eco and the right to request that Eco correct any incorrect Personal Information; and</p> <p>(b) that Eco does not disclose any Personal Information about the Client for the purpose of direct marketing.</p> <p>20.10 Eco 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.</p> <p>20.11 The Client can make a privacy complaint by contacting Eco via e-mail. Eco will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.</p> <p>21. Building and Construction Industry Security of Payments Act 1999 21.1 At Eco's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.</p> <p>21.2 Nothing in this Contract 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.</p> <p>22. Notice of Notices 22.1 Any written notice given under this Contract shall be deemed to have been given and received:</p> <p>(a) by handing the notice to the other party, in person;</p> <p>(b) by leaving it at the address of the other party as stated in this Contract;</p> <p>(c) by sending it by registered post to the address of the other party as stated in this Contract;</p> <p>(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;</p> <p>(e) if sent by email to the other party's last known email address.</p> <p>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.</p> <p>23. Trusts 23.1 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 Eco may have notice of the Trust, the Client covenants with Eco as follows:</p> <p>(a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;</p> <p>(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;</p> <p>(c) the Client will not without consent in writing of Eco (Eco will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:</p> <p>(i) the removal, replacement or retirement of the Client as trustee of the Trust;</p> <p>(ii) any alteration to or variation of the terms of the Trust;</p> <p>(iii) any advancement or distribution of capital of the Trust; or</p> <p>(iv) any resettlement of the trust property.</p> <p>24. General 24.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.</p> <p>24.2 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.</p> <p>24.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the Parramatta Local Court in that state. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).</p> <p>24.4 Subject to clause 16, Eco 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 Eco of these terms and conditions (alternatively Eco's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).</p> <p>24.5 Eco may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.</p> <p>24.6 The Client cannot licence or assign without the written approval of Eco.</p> <p>24.7 Eco 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 Eco's sub-contractors without the authority of Eco.</p> <p>24.8 The Client agrees that Eco 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 Eco 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, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to Eco.</p> <p>24.10 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 the parties.</p> <p>24.11 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.</p>
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Signed (Client)

Date

Signed (client)

Date