

## MD Brick (NSW) Pty Ltd – Terms & Conditions of Trade

### 1. Definitions

- 1.1 **"Business Days"** means Monday to Friday (between the hours of 7am & 5pm) and shall not include Saturday or Sunday and/or a public holiday in the area of the worksite or throughout the State of New South Wales (whether a whole or part of a day).
- 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.
- 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.
- 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 Customer does not wish to allow Cookies to operate in the background when using MD Brick's website, then the Customer 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.**
- 1.5 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting MD Brick to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Customer is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
  - (d) includes the Customer's executors, administrators, successors, and permitted assigns.
- 1.6 **"Goods"** means all Goods or Services supplied by MD Brick to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.7 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.8 **"MD Brick"** means MD Brick (NSW) Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of MD Brick (NSW) Pty Ltd.
- 1.9 **"Price"** means the Price payable (plus any GST where applicable) for the Goods as agreed between MD Brick and the Customer in accordance with clause 7 below.

### 2. Acceptance

- 2.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
  - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer 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 The Customer acknowledges and accepts that:
- (a) the supply of Goods on credit shall not take effect until the Customer has completed a credit application with MD Brick and it has been approved with a credit limit established for the account. In the event that the supply of Goods requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, MD Brick reserves the right to refuse delivery;
  - (b) Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, MD Brick reserves the right to vary the Price with alternative Goods as per clause 7.2, subject to prior confirmation and agreement of both parties;
  - (c) MD Brick also reserves the right to put the Customer's order on hold and/or halt all Services until such time as MD Brick and the Customer agree to such changes. MD Brick shall not be liable to the Customer for any loss or damage the Customer suffers due to MD Brick exercising its rights under this clause; and
  - (d) any lead time stipulated for delivery of the Goods in any quotation shall commence only upon MD Brick's satisfaction that the following criteria has been met being that:
    - (i) the Customer has provided to MD Brick any and all documents, permits, approvals and any other information required by MD Brick;
    - (ii) MD Brick has received from the Customer the official purchase order and/or cleared funds /deposits; and
    - (iii) MD Brick has accepted the Customer's order.
- 2.5 Any advice, recommendation, information or assistance provided by MD Brick in relation to the Goods or Services supplied is given in good faith to the Customer, or the Customer's agent and is based on MD Brick's own knowledge and experience and shall be accepted without liability on the part of MD Brick. Where such advice or recommendations are not acted upon then MD Brick shall require the Customer or their agent to authorise commencement of the Services in writing. MD Brick shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.6 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 Customer acknowledges and accepts that MD Brick 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 MD Brick 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 MD Brick in respect of the Services.
- 3.2 In circumstances where the Customer is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Customer is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not) ("**Customer Error**"). The Customer must pay for all Goods it orders

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from MD Brick notwithstanding that such Goods suffer from a Customer Error and notwithstanding that the Customer has not taken or refuses to take Delivery of such Goods. MD Brick is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Customer Errors.

### 4. Authorised Representatives

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

### 5. Change in Control

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

### 6. Credit Card Information

- 6.1 The Contractor will:
- (a) keep the Customer's personal details, including credit card details for only as long as is deemed necessary by the Contractor;
  - (b) not disclose the Customer's credit card details to any third party; and
  - (c) not unnecessarily disclose any of the Customer's personal information, except in accordance with the Privacy Act (clause 21) or where required by law.
- 6.2 The Customer expressly agrees that, if pursuant to this Contract, there are any unpaid charges or other amounts due and outstanding by the Customer, the Contractor is entitled to immediately charge the Customer's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Customer pursuant to the terms of this Contract.

### 7. Price and Payment

- 7.1 At MD Brick's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by MD Brick to the Customer upon placement of an order for Goods; or
  - (b) MD Brick's estimated Price (subject to clause 7.2). The final Price can only be ascertained upon completion of the Services. Variances in the estimated Price of more than ten percent (10%) will be subject to Customer approval before proceeding with the Services; or
  - (c) MD Brick's quoted Price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days. The Customer acknowledges and accepts that, upon receiving written notice from MD Brick, that MD Brick reserves the right to vary or amend any quoted Price in relation to future/subsequent orders.
- 7.2 MD Brick reserves the right to change the Price:
- (a) if a variation to the Goods (including but not limited to bending, cutting, additional specifications/plans, and spirals) which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including, but not limited to, any packing, pre-slinging, lifting bins, additional bundling or tagging) is requested; or
  - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the worksite, rescheduling of loads, incorrect measurements, plans and/or specifications provided by the Customer, safety considerations, prerequisite work by any third party not being completed, lack of required equipment, etc.) which are only discovered on commencement of the Services; or
  - (d) in the event of increases to MD Brick in the cost of freight, labour or materials which are beyond MD Brick's control.
- 7.3 Variations will be charged for on the basis of MD Brick's quotation, and will be detailed in writing, and shown as variations on MD Brick's invoice. The Customer shall be required to respond to any variation submitted by MD Brick within ten (10) working days. Failure to do so will entitle MD Brick 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.
- 7.4 At MD Brick's sole discretion, a reasonable non-refundable deposit may be required upon placement of an order for Goods, in accordance with any quotation provided by MD Brick or as notified to the Customer prior to the placement of an order for Goods.
- 7.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by MD Brick, which may be:
- (a) on delivery of the Goods;
  - (b) before delivery of the Goods;
  - (c) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by MD Brick.
- 7.6 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and MD Brick.
- 7.7 MD Brick may in its discretion allocate any payment received from the Customer towards any invoice that MD Brick determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer MD Brick may re-allocate any payments previously received and allocated. In the absence of any payment allocation by MD Brick, payment will be deemed to be allocated in such manner as preserves the maximum value of MD Brick's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 7.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by MD Brick 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 Customer must notify MD Brick in writing within three (3) business days, the invoice shall remain due and

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payable for the full amount, until such time as MD Brick investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in MD Brick placing the Customer's account into default and subject to default interest in accordance with clause 19.1.

- 7.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to MD Brick an amount equal to any GST MD Brick must pay for any supply by MD Brick under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set-off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 8. Provision of the Services

- 8.1 Subject to clause 8.2 it is MD Brick's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 8.2 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that MD Brick claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond MD Brick's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
  - (b) have the worksite ready for the Services; or
  - (c) notify MD Brick that the worksite is ready.
- 8.3 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at MD Brick's address; or
  - (b) MD Brick (or MD Brick's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 8.4 The Customer acknowledges and accepts that any deliveries requested outside of MD Bricks Business Days shall incur additional charges.
- 8.5 The cost of Delivery will be payable by the Customer in accordance with the quotation provided by MD Brick to the Customer, or as otherwise notified to the Customer prior to the placement of an order for Goods. Unless otherwise agreed any loading/un-loading resources and packaging required shall be in addition to the Price.
- 8.6 MD Brick 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.
- 8.7 Any time specified by MD Brick for delivery of the Goods is an estimate only and MD Brick will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that MD Brick is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then MD Brick shall be entitled to charge a reasonable fee for redelivery and/or storage.

### 9. Product Specifications

- 9.1 The Customer acknowledges and accepts that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in MD Brick's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by MD Brick; and
  - (b) while MD Brick may have provided information or figures to the Customer regarding the performance of the Goods, the Customer acknowledges that MD Brick has given these in good faith and are estimates based on industry prescribed estimates.

### 10. Accuracy of Plans

- 10.1 MD Brick shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, MD Brick accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 10.2 All customary building industry tolerances shall apply to the dimensions and measurements of the Services unless MD Brick and the Customer agree otherwise in writing.
- 10.3 Where the Customer is to supply MD Brick with any design specifications (including, but not limited to CAD drawings) the Customer shall be responsible for providing accurate data. MD Brick shall not be liable whatsoever for any errors in the Services that are caused by incorrect or inaccurate data being supplied by the Customer.
- 10.4 In the event the Customer gives information relating to measurements and quantities of Services required in completing the Services, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or MD Brick places an order based on these measurements and quantities. MD Brick accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.

### 11. Risk

- 11.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 11.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, MD Brick is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by MD Brick is sufficient evidence of MD Brick's rights to receive the insurance proceeds without the need for any person dealing with MD Brick to make further enquiries.
- 11.3 If the Customer requests MD Brick to leave Goods outside MD Brick's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 11.4 The Customer acknowledges and accepts that Goods supplied may exhibit variations in shade, colour, texture, surface and finish, and may :
- (a) fade or change colour over time;
  - (b) expand, contract or distort as a result of exposure to heat, cold, weather;
  - (c) mark or stain if exposed to certain substances; and
  - (d) be damaged or disfigured by impact or scratching.

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- 11.5 MD Brick will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.

### 12. Customer's Responsibilities

- 12.1 The Customer acknowledges and accepts that it is the Customer's responsibility to check quantities, with an on-site measurement before commencing fixing. Measurements taken off plans or the Customer's figures by MD Brick are approximate only and no responsibility is taken for their accuracy.
- 12.2 The Customer shall ensure that MD Brick has clear and free access at all times to enable them to deliver the Goods. MD Brick shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of MD Brick.
- 12.3 Notwithstanding clause 12.2, it shall be the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks. The Customer agrees to indemnify MD Brick against all costs incurred by the Carrier in recovering such vehicles in the event they become bogged or otherwise immovable.

### 13. Compliance with Laws

- 13.1 The Customer and MD Brick shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods/Services, including any work health and safety laws (WHS) relating or any other relevant safety standards or legislation pertaining to the Services.
- 13.2 Both parties acknowledge and agree:
- (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 Services; and
  - (b) that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 13.3 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Goods.

### 14. Title

- 14.1 MD Brick and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid MD Brick all amounts owing to MD Brick; and
  - (b) the Customer has met all of its other obligations to MD Brick.
- 14.2 Receipt by MD Brick 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.
- 14.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 14.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to MD Brick on request;
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for MD Brick and must pay to MD Brick the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (c) the Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for MD Brick and must pay or deliver the proceeds to MD Brick on demand;
  - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of MD Brick and must sell, dispose of or return the resulting product to MD Brick as it so directs;
  - (e) the Customer irrevocably authorises MD Brick to enter any premises where MD Brick believes the Goods are kept and recover possession of the Goods;
  - (f) MD Brick may recover possession of any Goods in transit whether or not Delivery has occurred;
  - (g) the Customer 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 MD Brick; and
  - (h) MD Brick may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

### 15. Personal Property Securities Act 2009 ("PPSA")

- 15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 15.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by MD Brick to the Customer, and the proceeds from such Goods.
- 15.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which MD Brick 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 15.3(a)(i) or 15.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, MD Brick 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;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of MD Brick;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of MD Brick;

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- (e) immediately advise MD Brick of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales.
- 15.4 MD Brick and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 15.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by MD Brick, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Customer must unconditionally ratify any actions taken by MD Brick under clauses 15.3 to 15.5.
- 15.9 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 16. Security and Charge**
- 16.1 In consideration of MD Brick agreeing to supply the Goods and/or provide its Services, the Customer grants MD Brick a security interest by way of a floating charge (registerable by MD Brick pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Customer or owned by the Customer in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Goods and/or Services under this Contract and/or permit MD Brick to appoint a receiver to the Customer in accordance with the *Corporations Act 2001* (Cth).
- 16.2 The Customer indemnifies MD Brick from and against all MD Brick's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising MD Brick's rights under this clause.
- 16.3 In the event that the Customer defaults or breaches any term of this Contract and as a result, the security provided in clauses 14.1, 15.2 and 16.1 as applicable, is deemed insufficient by MD Brick to secure the repayment of monies owed by the Customer to MD Brick, the Customer hereby grants MD Brick a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Customer now, or owned by the Customer in the future, to secure the performance of the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 17. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 17.1 The Customer must inspect the Goods on Delivery and must within twenty-four (24) hours of Delivery notify MD Brick in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow MD Brick to inspect the Goods.
- 17.2 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**).
- 17.3 MD Brick acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, MD Brick makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. MD Brick's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.5 If the Customer is a consumer within the meaning of the CCA, MD Brick's liability is limited to the extent permitted by section 64A of Schedule 2.
- 17.6 If MD Brick is required to replace the Goods under this clause or the CCA, but is unable to do so, MD Brick may refund any money the Customer has paid for the Goods.
- 17.7 If the Customer is not a consumer within the meaning of the CCA, MD Brick'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 Customer by MD Brick at MD Brick's sole discretion;
  - (b) limited to any warranty to which MD Brick is entitled, if MD Brick did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 17.8 Subject to this clause 17, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 17.1; and
  - (b) MD Brick has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Customer'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.
- 17.9 Notwithstanding clauses 17.1 to 17.8 but subject to the CCA, MD Brick shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
  - (b) the Customer using the Goods for any purpose other than that for which they were designed;
  - (c) the Customer 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 Customer failing to follow any instructions or guidelines provided by MD Brick;
  - (e) fair wear and tear, any accident, or act of God.
- 17.10 MD Brick may in its absolute discretion accept non-defective Goods for return in which case MD Brick may require the Customer to pay handling fees of up to thirty percent (30%) of the value of the returned Goods plus any freight costs.
- 17.11 Notwithstanding anything contained in this clause if MD Brick is required by a law to accept a return, then MD Brick will only accept a return on the conditions imposed by that law.

**18. Intellectual Property**

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

**19. Default and Consequences of Default**

- 19.1 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 MD Brick's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Customer owes MD Brick any money, the Customer shall indemnify MD Brick from and against all costs and disbursements:
  - (a) incurred; and/or
  - (b) which would be incurred and/or
  - (c) for which by the Customer would be liable;in regard to legal costs on a solicitor and own client basis incurred in exercising MD Brick's rights under these terms and conditions, internal administration fees, MD Brick'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.
- 19.3 Further to any other rights or remedies MD Brick may have under this Contract, if a Customer has made payment to MD Brick, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by MD Brick under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 19.4 Without prejudice to MD Brick's other remedies at law MD Brick shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to MD Brick shall, whether or not due for payment, become immediately payable if:
  - (a) any money payable to MD Brick becomes overdue, or in MD Brick's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer has exceeded any applicable credit limit provided by MD Brick;
  - (c) the Customer 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 Customer or any asset of the Customer.

**20. Cancellation**

- 20.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("**the Breaching Party**") the other party may suspend or terminate the supply or purchase of Goods and/or Services to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 20.2 If MD Brick, due to reasons beyond MD Brick's reasonable control, is unable to deliver any Goods and/or Services to the Customer, MD Brick may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Customer. On giving such notice MD Brick shall repay to the Customer any money paid by the Customer for the Goods and/or Services. MD Brick shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 The Customer may cancel Delivery of the Goods and/or Services by written notice served within forty-eight (48) hours of placement of the order. If the Customer cancels Delivery in accordance with this clause 20.3, the Customer will not be liable for the payment of any costs of MD Brick, except where a deposit is payable in accordance with clause 7.4. Failure by the Customer to otherwise accept Delivery of the Goods and/or Services shall place the Customer in breach of this Contract.
- 20.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

**21. Privacy Policy**

- 21.1 All emails, documents, images, or other recorded information held or used by MD Brick is Personal Information, as defined and referred to in clause 21.3, and therefore considered Confidential Information. MD Brick 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"). MD Brick acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by MD Brick that may result in serious harm to the Customer, MD Brick will notify the Customer 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 Customer by written consent, unless subject to an operation of law.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to MD Brick in respect of Cookies where the Customer utilises MD Brick's website to make enquiries. MD Brick 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 Customer's:
  - (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and

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- (c) reports are available to MD Brick when MD Brick sends an email to the Customer, so MD Brick may collect and review that information (“collectively Personal Information”)
- If the Customer consents to MD Brick’s use of Cookies on MD Brick’s website and later wishes to withdraw that consent, the Customer may manage and control MD Brick’s privacy controls via the Customer’s web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 21.3 The Customer agrees that MD Brick may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer including the Customer’s repayment history in the preceding two (2) years.
- 21.4 The Customer consents to MD Brick being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 21.5 The Customer agrees that personal credit information provided may be used and retained by MD Brick 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 Customer’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 Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 21.6 MD Brick may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 21.7 The information given to the CRB may include:
- (a) Personal Information as outlined in 21.3 above;
  - (b) name of the credit provider and that MD Brick is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Customer’s application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults (provided MD Brick 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 Customer no longer has any overdue accounts and MD Brick has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of MD Brick, the Customer has committed a serious credit infringement;
  - (h) advice that the amount of the Customer’s overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 21.8 The Customer shall have the right to request (by e-mail) from MD Brick:
- (a) a copy of the Personal Information about the Customer retained by MD Brick and the right to request that MD Brick correct any incorrect Personal Information; and
  - (b) that MD Brick does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 21.9 MD Brick will destroy Personal Information upon the Customer’s request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 21.10 The Customer can make a privacy complaint by contacting MD Brick via e-mail. MD Brick will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 22. Building and Construction Industry Security of Payments Act 1999**
- 22.1 At MD Brick’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.
- 22.2 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.
- 23. Service of Notices**
- 23.1 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.
- 23.2 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.
- 24. Trusts**
- 24.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust (“Trust”) then whether or not MD Brick may have notice of the Trust, the Customer covenants with MD Brick as follows:

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- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund;
- (b) the Customer has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust, the trustees and the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Customer will not during the term of the Contract without consent in writing of MD Brick (MD Brick will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
  - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
  - (ii) any alteration to or variation of the terms of the Trust;
  - (iii) any advancement or distribution of capital of the Trust; or
  - (iv) any resettlement of the trust fund or trust property.

### 25. General

- 25.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, 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.
- 25.2 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, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.3 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 Gosford Courts in that state. These terms prevail over all terms and conditions of the Customer (even if they form part of the Customer's purchase order).
- 25.4 MD Brick may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.
- 25.5 The Customer cannot licence or assign without the written approval of MD Brick.
- 25.6 MD Brick 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 Customer agrees and understands that they have no authority to give any instruction to any of MD Brick's sub-contractors without the authority of MD Brick.
- 25.7 The Customer agrees that MD Brick may amend their general terms and conditions for subsequent future Contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for MD Brick to provide Goods to the Customer.
- 25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, 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 Customer to make a payment to MD Brick, once the parties agree that the Force Majeure event has ceased.
- 25.9 Both parties warrant that they have the power to enter 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.
- 25.10 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.
- 25.11 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.