

D & A EQUIPMENT PTY LTD
ABN 32 607 259 361

CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

DATE: _____ REF No. _____

CUSTOMER'S TRADE NAME: _____

CUSTOMER'S FULL or LEGAL NAME: _____

Phone: _____ Fax: _____

Mobile: _____ Email: _____

Billing Address: _____ Physical Address: _____

_____ State: _____ Postcode: _____

BANK A/C NAME: _____ BSB: _____ A/C NO: _____

ABN/ACN Number: _____

Requested Credit Limit: _____ Date Established: _____

Contact 1: _____ Contact 2: _____

Position: _____ Position: _____

Phone: _____ Phone: _____

DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company) OR TRUSTEE (If a Trust)

Full Name: _____ Full Name: _____

Home Address: _____ Home Address: _____

_____ State: _____ Postcode: _____

ID: _____ Date of Birth: _____ ID: _____ Date of Birth: _____
(Driver's Licence, Passport, etc.) (Driver's Licence, Passport, etc.)

Home Phone: _____ Home Phone: _____

TRADE REFERENCES

Business Name 1: _____ Address or A/C No: _____

Phone: _____ Fax: _____

Business Name 2: _____ Address or A/C No: _____

Phone: _____ Fax: _____

Business Name 3: _____ Address or A/C No: _____

Phone: _____ Fax: _____

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of D & A Equipment Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. ***I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Customer I shall be personally liable for the performance of the Customer's obligations under this contract.***

SIGNED (CUSTOMER): _____ **SIGNED (CONTRACTOR):** _____

Name: _____ Name: _____

Position: _____ Position: _____

WITNESS TO CUSTOMER'S SIGNATURE:

Signed: _____ Name: _____ Date: _____

Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of D & A Equipment Pty Ltd and its successors and assigns ("the Contractor") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

("the Customer") *[Insert Company Name In Box Provided]*

I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

1. **GUARANTEE** the due and punctual payment to the Contractor of all moneys which are now owing to the Contractor by the Customer and all further sums of money from time to time owing to the Contractor by the Customer in respect of goods and services supplied or to be supplied by the Contractor to the Customer or any other liability of the Customer to the Contractor, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with the Contractor, including but not limited to the Terms & Conditions of Trade signed by the Customer and annexed to this Guarantee and Indemnity. If for any reason the Customer does not pay any amount owing to the Contractor the Guarantor will immediately on demand pay the relevant amount to the Contractor. In consideration of the Contractor agreeing to supply the Goods to the Customer, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 ("PPSA") and unequivocally consents to the Contractor registering any interest so charged. The Guarantor irrevocably appoints the Contractor and each director of the Contractor as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which the Contractor may reasonably require to:
 - (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (b) register any other document required to be registered by the PPSA or any other law; or
 - (c) correct a defect in a statement referred to in clause 1(a) or 1(b).
2. **HOLD HARMLESS AND INDEMNIFY** the Contractor on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, the Contractor in connection with:
 - (a) the supply of goods and/or services to the Customer; or
 - (b) the recovery of moneys owing to the Contractor by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to the Contractor's nominees costs of collection and legal costs; or
 - (c) moneys paid by the Contractor with the Customer's consent in settlement of a dispute that arises or results from a dispute between, the Contractor, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by the Contractor to the Customer.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

3. **I/We have received, read and understood the Contractor's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of moneys owing to the Contractor by the Customer and all obligations herein have been fully paid satisfied and performed.
5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Contractor's part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Customer's obligations to the Contractor, each Guarantor shall be a principal debtor and liable to the Contractor accordingly.
6. If any payment received or recovered by the Contractor is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Contractor shall each be restored to the position in which they would have been had no such payment been made.
7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
8. **I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Customer to the Contractor.**
9. I/we irrevocably authorise the Contractor to obtain from any person or company any information which the Contractor may require for credit reference purposes. I/We further irrevocably authorise the Contractor to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with the Contractor as a result of this Guarantee and Indemnity being actioned by the Contractor.
10. The above information is to be used by the Contractor for all purposes in connection with the Contractor considering this Guarantee and Indemnity and the subsequent enforcement of the same.

<p>GUARANTOR-1 SIGNED: _____</p> <p>FULL NAME: _____</p> <p>HOME ADDRESS: _____</p> <p>DATE OF BIRTH: _____</p> <p>SIGNATURE OF WITNESS: _____</p>

<p>GUARANTOR-2 SIGNED: _____</p> <p>FULL NAME: _____</p> <p>HOME ADDRESS: _____</p> <p>DATE OF BIRTH: _____</p> <p>SIGNATURE OF WITNESS: _____</p>

Note: 1. If the Customer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).

2. If the Customer is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

WARNING: THIS IS AN IMPORTANT DOCUMENT YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT

D & A Equipment Pty Ltd - Terms & Conditions of Trade

1.	<p>Definitions</p> <p>"Contractor" means D & A Equipment Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of D & A Equipment Pty Ltd.</p> <p>"Customer" means the person buying the Goods as specified in any invoice, document or order.</p> <p>"Goods" means all Goods or Services supplied by the Contractor 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).</p> <p>"Price" means the Price payable for the Goods as agreed between the Contractor and the Customer in accordance with clause 5 below.</p>	1.1 1.2 1.3 1.4	<p>(b) The Customer has met all of its other obligations to the Contractor.</p> <p>Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.</p> <p>It is further agreed that the Customer passes to the Contractor in accordance with clause 10.1 that (a) until ownership of the Goods passes to the Customer and must return the Goods to the Contractor on 15.4 request.</p> <p>(b) The Customer holds the benefit of the Customer's insurance of the Goods on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.</p> <p>(c) The Customer must not sell, dispose of, 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 Contractor will hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand.</p> <p>(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 Contractor as it so directs.</p> <p>(e) The Customer irrevocably authorises the Contractor to enter any premises where the Contractor believes the Goods are kept and recover possession of the Goods.</p> <p>(f) The Contractor may recover possession of any Goods in transit whether or not delivery has been made.</p> <p>(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 the Contractor.</p> <p>(h) The Contractor may commence proceedings to recover the Price of the Goods notwithstanding that ownership of the Goods has not passed to the Customer.</p>	15.3	<p>Without prejudice to any other remedies the Contractor may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Goods to the Customer. The Contractor will not be liable to the Customer for any loss or damage the Customer suffers because the Contractor has exercised its rights under this clause.</p> <p>Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Customer will be unable to make a payment when it falls due;</p> <p>(b) the Customer becomes insolvent, commences 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>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p>
2.	<p>Acceptance</p> <p>The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.</p> <p>These terms and conditions may only be amended with the Contractor's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Contractor and the Customer.</p>	2.1 2.2	<p>(i) The Contractor 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 the Contractor.</p> <p>(j) The Contractor may commence proceedings to recover the Price of the Goods notwithstanding that ownership of the Goods has not passed to the Customer.</p>	17.1	<p>Compliance with Laws</p> <p>The Contractor and the Customer shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services. The Contractor shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.</p> <p>The Contractor agrees that the site will comply with any occupational health and safety laws relating to building construction sites and any other relevant safety standards or legislation.</p>
3.	<p>Change in Control</p> <p>The Customer shall give the Contractor 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 numbers, or business practice). The Customer shall be liable for any loss incurred by the Contractor as a result of the Customer's failure to comply with this clause.</p>	3.1	<p>(k) The Contractor 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 the Contractor.</p> <p>(l) The Contractor may commence proceedings to recover the Price of the Goods notwithstanding that ownership of the Goods has not passed to the Customer.</p>	17.2	<p>Cancellation</p> <p>The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Contractor shall repay to the Customer any money paid by the Customer for the Goods. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.</p>
4.	<p>Confidentiality</p> <p>"Confidential Information" shall mean all information identified in writing as being confidential which is obtained from the Customer by the Contractor, or from the Contractor by the Customer or is generated by the Contractor in connection with the Agreement, other than information:</p> <p>(a) which becomes generally available in the public domain other than by the unauthorised disclosure of either of the parties to the Supply Agreement; or</p> <p>(b) which has or may come into the possession of one party otherwise than in breach of a duty of confidence to the other party; or</p> <p>(c) which is already in the possession of a party with the right to disclose.</p> <p>The Contractor shall not, without the previous written consent of the Customer, use, publish or disclose to any person, nor cause, nor permit, any of its servants, agents or sub-contractors to use, publish or disclose any Confidential Information otherwise than for the performance of its duty under the Agreement.</p>	4.1	<p>(m) The Contractor 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 the Contractor.</p> <p>(n) The Contractor may commence proceedings to recover the Price of the Goods notwithstanding that ownership of the Goods has not passed to the Customer.</p>	17.3	<p>Dispute Resolution</p> <p>If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer the dispute to arbitration. Any arbitration shall be:</p> <p>(a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and</p> <p>(b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.</p>
5.	<p>Price and Payment</p> <p>At the Contractor's sole discretion the Price shall be either:</p> <p>(a) as indicated on any invoice provided by the Contractor to the Customer; or</p> <p>(b) the Contractor's quoted price (subject to clause 5.2) which will be valid for the period stated and will be charged for on the basis of the Contractor's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.</p> <p>The Contractor reserves the right to change the Price in the event of a variation to the Contractor's quotation. Any variation from the planned scheduled Services or specifications (including, but not limited to, any variation due to unforeseen circumstances, hard rock barriers below the surface, iron reinforcing rods in concrete, or due to fluctuations in the currency exchange rate, or as a result of increases to the Contractor in the costs of materials and labour) will be charged for on the basis of the Contractor's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.</p> <p>The Contractor may submit detailed progress payment claims in accordance with the Contractor's specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the site but not yet installed.</p> <p>At the Contractor's sole discretion a non-refundable deposit may be required.</p> <p>Time for payment for the Goods, in the absence of the Price will be payable by the Customer on the date determined by the Contractor, which may be:</p> <p>(a) on delivery of the Goods;</p> <p>(b) before delivery of the Goods;</p> <p>(c) by way of instalments/progress payments in accordance with the Contractor's payment schedule;</p> <p>(d) the date specified on any invoice or other form as being the date of payment; or</p> <p>(e) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Customer by the Contractor.</p> <p>Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two percent (2%) of the Price), or by any other method as agreed to between the Contractor and the Customer.</p> <p>Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for the sale of the 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.</p>	5.1 5.2 5.3 5.4 5.5	<p>(o) The Contractor 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 the Contractor.</p> <p>(p) The Contractor may commence proceedings to recover the Price of the Goods notwithstanding that ownership of the Goods has not passed to the Customer.</p>	18.1 18.2 18.3 18.4 18.5	<p>Personal Property Securities Act 2009 ("PPSA")</p> <p>In this clause financial statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.</p> <p>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 the Contractor to the Customer.</p> <p>The Customer undertakes to:</p> <p>(a) promptly sign any further documents and/or provide any further information (such as information to be complete, accurate and up-to-date in all respects) which the Contractor 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 11.3(a)(i) or 11.3(a)(ii);</p> <p>(b) indemnify and upon demand reimburse, the Contractor 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;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;</p> <p>(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Contractor;</p> <p>(e) immediately advise the Contractor of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>The Contractor 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.</p> <p>The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(1)(b) and 133 of the PPSA.</p> <p>The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>Unless otherwise agreed to in writing by the Contractor, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>The Customer must unconditionally ratify any actions taken by the Contractor under clauses 11.3 to 11.5.</p> <p>Subject to any express provisions to the contrary in the contract nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p>
6.	<p>Delivery of Goods</p> <p>Delivery ("Delivery") of the Goods is taken to occur at the time that:</p> <p>(a) the Customer or the Customer's nominated carrier takes possession of the Goods at the Contractor's address; or</p> <p>(b) the Contractor (or the Contractor's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.</p> <p>At the Contractor's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.</p> <p>The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods arranged then the Contractor shall be entitled to charge a reasonable fee for redelivery and/or storage.</p> <p>Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.</p> <p>The Contractor may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:</p> <p>(a) such discrepancy in quantity shall not exceed five percent (5%); and</p> <p>(b) the Price shall be adjusted pro rata to the discrepancy.</p> <p>Any time or date given by the Contractor to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and the Contractor will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.</p>	6.1 6.2 6.3 6.4 6.5 6.6 6.7	<p>(q) The Contractor 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 the Contractor.</p> <p>(r) The Contractor may commence proceedings to recover the Price of the Goods notwithstanding that ownership of the Goods has not passed to the Customer.</p>	19.1 19.2 19.3 19.4 19.5	<p>Security and Charge</p> <p>In consideration of the Contractor agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>The Customer indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.</p> <p>The Customer irrevocably appoints the Contractor and each director of the Contractor as the Customer's agent and authorises them to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf.</p>
7.	<p>Risk</p> <p>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.</p> <p>If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Contractor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.</p> <p>If the Contractor requests the Contractor to leave Goods outside the Contractor's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Contractor's sole risk.</p> <p>Where the Contractor gives advice or recommendations to the Customer, or the Customer's agent, regarding the suitability of the worksite for the laying of concrete slabs, foundations or similar works and such advice or recommendations are not acted upon then the Contractor shall require the Customer or their agent to authorise commencement of the Services in writing. The Contractor shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.</p>	7.1 7.2 7.3 7.4	<p>(s) The Contractor 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 the Contractor.</p> <p>(t) The Contractor may commence proceedings to recover the Price of the Goods notwithstanding that ownership of the Goods has not passed to the Customer.</p>	20.1 20.2 20.3	<p>Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</p> <p>The Contractor must inspect the Goods on delivery and must within seven (7) days of delivery notify the Contractor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as it becomes possible after any such defect becomes evident. Upon such notification the Customer must allow the Contractor to inspect the Goods.</p> <p>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>The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.</p> <p>If the Customer is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.</p> <p>If the Contractor is required to replace the Goods under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Customer has paid for the Goods.</p> <p>If the Customer is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Goods is:</p> <p>(a) limited to the value of any express warranty or warranty card provided to the Customer by the Contractor at the Contractor's sole discretion;</p> <p>(b) an express warranty to which the Contractor is entitled, if the Contractor did not manufacture the Goods;</p> <p>(c) otherwise negated absolutely.</p> <p>Subject to this clause 13, returns will only be accepted provided that:</p> <p>(a) the Customer has complied with the provisions of clause 13.1; and</p> <p>(b) the Contractor has agreed that the Goods are defective; and</p> <p>(c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and</p> <p>(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.</p> <p>Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, the Contractor shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:</p> <p>(a) the Contractor failing to properly maintain or store any Goods;</p> <p>(b) the Customer using the Goods for any purpose other than that for which they were designed;</p> <p>(c) the Contractor continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;</p> <p>(d) the Contractor failing to follow any instructions or guidelines provided by the Contractor; or</p> <p>(e) fair wear and tear, any accident, or act of God.</p> <p>Notwithstanding anything contained in this clause if the Contractor is required by a law to accept a return then the Contractor will only accept a return on the conditions imposed by that law.</p>
8.	<p>Access</p> <p>The Customer shall ensure that the Contractor has clear and free access to the work site at all times to enable them to undertake the Services. The Contractor shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of the Contractor.</p> <p>Any time or date given by the Contractor to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and the Contractor will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.</p>	8.1 8.2	<p>(u) The Contractor 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 the Contractor.</p> <p>(v) The Contractor may commence proceedings to recover the Price of the Goods notwithstanding that ownership of the Goods has not passed to the Customer.</p>	21.1 21.2 21.3	<p>Intellectual Property</p> <p>Where the Contractor has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Contractor.</p> <p>The Contractor warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.</p>
9.	<p>Underground Locations</p> <p>Prior to the Contractor commencing any work the Customer must advise the Contractor of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.</p> <p>With the Contractor will take all care to avoid damage to any underground services the Customer agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 9.1.</p>	9.1 9.2	<p>(w) The Contractor 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 the Contractor.</p> <p>(x) The Contractor may commence proceedings to recover the Price of the Goods notwithstanding that ownership of the Goods has not passed to the Customer.</p>	21.4 21.5	<p>Default and Consequences of Default</p> <p>Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the amount is paid in full at a rate of two and a half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>If the Customer owes the Contractor any money the Customer shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's contract default fees, and bank dishonour fees).</p>
10.	<p>Title</p> <p>The Contractor and the Customer agree that ownership of the Goods shall not pass until:</p> <p>(a) the Customer has paid the Contractor all amounts owing to the Contractor; and</p>	10.1	<p>(y) The Contractor 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 the Contractor.</p> <p>(z) The Contractor may commence proceedings to recover the Price of the Goods notwithstanding that ownership of the Goods has not passed to the Customer.</p>	21.6	<p>Building Industry Security of Payments Act</p> <p>At the Contractor's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services due to the Contractor by the Building and Construction Industry Security of Payments Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Building and Construction Industry Payments Act 2004 (Queensland), Building and Construction Industry Security of Payments Act 2009 (Tasmania), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry Security of Payments Act 2009 (Australian Capital Territory) may apply.</p> <p>Notwithstanding this agreement is intended to have the effect of contracting out of any applicable provisions of the above Acts listed in clause 20 each as applicable, except to the extent permitted by the Act where applicable.</p>