

Arctic Spark Ltd – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "Contractor" means Arctic Spark Ltd, its successors and assigns or any person acting on behalf of and with the authority of Arctic Spark Ltd.
- 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Contractor to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
- (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
- (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
- (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Contractor to the Client at the Client's request from time to time (where the context so permits the terms "Works" or "Materials" shall be interchangeable for the other).
- 1.5 "Intended Use" means a product and the use thereof, for which the building product is intended to be, or is reasonably likely to be, associated with a building.
- 1.6 "Non-Conforming Product" means products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
- (a) the product is not, or will not be, safe; or
- (b) does not, or will not, comply with the relevant regulatory provisions; or
- (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.
- 1.7 "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.
- 1.8 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Works via the website.**
- 1.9 "Prices" means the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Works as agreed between the Contractor and the Client in accordance with clause 6 below.
2. **Acceptance**
- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 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 Client acknowledges that the supply of Works on credit shall not take effect until the Client has completed a credit application with the Contractor and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Works request exceeds the Client's credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
3. **Authorised Representatives**
- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to the Contractor as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Materials or Works on the Client's behalf and/or to request any variation to the Works on the Client's behalf (such authority to continue until all requested Works have been completed or the Client otherwise notifies the Contractor in writing that said person is no longer the Client's duly authorised representative).
- 3.2 In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise the Contractor in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor's profit margin) in providing any Works, Materials or variations requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).
4. **Errors and Omissions**
- 4.1 The Client acknowledges and accepts that the Contractor 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 the Contractor 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 the Contractor in respect of the Works.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or willful misconduct of the Contractor, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
5. **Change in Control**
- The Client shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.
6. **Price and Payment**
- At the Contractor's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Contractor to the Client in respect of Works performed or Materials supplied; or
- (b) the Contractor's quoted Price (subject to clause 6.2) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.
- The Contractor reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
- (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
- (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, hard rock barriers below the surface, iron reinforcing rods in concrete, safety considerations, prerequisite work by any third party not being completed, or hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Works; or
- (d) in the event of increases to the Contractor in the cost of labour or Materials which are beyond the Contractor's control.
- Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Client shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- At the Contractor's sole discretion a deposit may be required. Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:
- (a) on completion of the Works; or
- (b) by way of progress payments in accordance with the Contractor'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;
- (c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client'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 Client by the Contractor.
- At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Works during which time all Works are to be completed and/or all defects are to be remedied. Any Retention Money applicable to this Contract is to be dealt with in accordance with section 18(a) to 18(j) of the Construction Contracts Act 2002.
- Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and the Contractor (including but not limited to choosing a finance option which is available through the Contractor).
- The Contractor may in its discretion allocate any payment received from the Client towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Contractor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Contractor, payment will be deemed to be allocated in such manner as preserves the maximum value of the Contractor's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by the Contractor is a claim made under the Construction Contracts Act 2002.
- Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
7. **Provision of the Works**
- Subject to clause 7.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.
- The Works' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
- (b) have the site ready for the Works; or
- (c) notify the Contractor that the site is ready.
- The Contractor may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- In the event that the Contractor is required to provide the Works urgently, that may require the Contractor's staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then the Contractor reserves the right to charge the Client a minimum call out fee based on the Contractor's standard hourly labour rate, plus travel, plus Materials, unless otherwise agreed between the Contractor and the Client.
- Any time specified by the Contractor for delivery of the Works is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that the Contractor is unable to supply the Works as agreed solely due to any action or inaction of the Client, then the Contractor shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
8. **Risk**
- If the Contractor retains ownership of the Materials under clause 14 then:
- (a) where the Contractor is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by the Contractor or the Contractor's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address); or
- (b) where the Contractor is to both supply and install Materials then the Contractor 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.
- Notwithstanding the provisions of clause 8.1 if the Client specifically requests the Contractor to leave Materials outside the Contractor's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- The Contractor is not responsible for the removal of rubbish from or clean-up of the building/construction site/s. This is the responsibility of the Client or the Client's agent.
- The Client acknowledges and accepts that:
- (a) the Contractor is only responsible for parts that are replaced by the Contractor, and in the event that other parts/materials, subsequently fail, the Client agrees to indemnify the Contractor against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising; and
- (b) the Contractor is entitled to suspend or terminate the supply of Materials or Works to the Client if there is a material change to the scope of Work as a result of inaccurate plans, specifications or other information; and the Client shall be liable for the Contractor's costs of demobilisation or re-mobilisation of any plant, equipment or staff to or from the site, upon the re-commencement of the Works at the site, if applicable; and
- (c) they shall not be entitled to withhold any payment due under this Contract because of any delay in the connection of, or the supply of electricity to the Materials by an electrical distributor or any other third party; and
- (d) they shall be responsible for any building work, excavation work, core drilling or any other non-standard surface penetrations that need to be carried out to enable the Contractor to carry out the Works.
- The Contractor shall upon installation ensure that all Materials are to be installed in a manner that is fully compliant with industry standards. If, for any reason, the Client specifically requires the Materials to be installed in any way which goes against the Contractor's recommendations and/or falls below industry standards, a request detailing that requirement must be made in writing to the Contractor. Accordingly, the Contractor offers no warranty in regards to the aforementioned.
- The Contractor accepts no responsibility for:
- (a) any damage or defects in any Materials caused by movement and/or interference of the said Materials; and
- (b) painting, re-decorating, re-sealing, carpentry or any other Works required for the restoration or making good of any surface/area where any Works have been carried out.
- If during the course of installation when the Works are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by the Contractor, then the Contractor shall notify the Client immediately. The power, if isolated, will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Works including any Materials and labour shall be the responsibility of the Client and will be shown as a variation on the invoice in accordance with clause 6.2.
- Any live services or Works undertaken near live conductors where it is safe to do so shall be dealt with in accordance with Australian and New Zealand Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Commonwealth and Statutory Acts and Work Place Regulations". The Contractor's live Works procedures are designed to eliminate risk of injury to the Contractor's employees, damage to the Client's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Works for which additional charges may be applicable. This shall be invoiced in accordance with clause 6.2.
- The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.
9. **Installation Risk**
- The Client acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify the Contractor immediately upon any proposed changes. The Client agrees to indemnify the Contractor against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.2.
- The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) that the Contractor, its employees or suppliers reasonably form the opinion that the Client's premises is not safe for the installation of Materials to proceed then the Contractor shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 7.2 above) until the Contractor is satisfied that it is safe for the installation to proceed. The Contractor may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed but all such works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.
- The Client acknowledges that in the event that asbestos or any other toxic substances are discovered whilst undertaking any Works, the Contractor shall immediately advise the Client and all relevant authorities of the same, and shall be entitled to suspend the Works pending a risk assessment in relation to those materials. The Client shall be liable for all additional costs (howsoever arising) incurred by the Contractor as a result of the discovery of asbestos/hazardous materials and/or any suspension of Works in relation thereto.
10. **Materials, Documents and Works Supplied by the Client**
- The Client:
- (a) warrants that any documentation supplied for the Works and the content or methods therein are accurate and/or suitable to be used for the purpose for which the document/s were created;
- (b) agrees that it is reasonable for the Contractor to rely on the documentation;
- (c) agrees to supply the Contractor with as many copies of the documentation as the Contractor may reasonably need to perform the Works or to obtain any necessary approvals required for the Works.
- The Client agrees that all materials and works supplied by the Client or the Client's third-party sub-contractors will:
- (a) be performed or supplied in accordance with all legislative requirements (including, but not limited to and WorkSafe guidelines etc.);
- (b) be suitable for their inclusion into the Works;
- (c) be completed to the Contractor's requirements.
- The Contractor may, where the Contractor believes that any materials or works supplied by the Client or any third party employed by the Client are defective, require that the defective materials be replaced or require such works as are considered defective to be removed, repaired or replaced, the costs of which shall be the Client's responsibility.
- Notwithstanding clause 10.3 the Contractor shall have no liability whatsoever in terms of the performance of, or suitability of, any materials or works supplied by either the Client or any third party employee of the Client.
- In the event that the Client undertakes or employs any third party to undertake any works at the site whilst the Contractor is undertaking Works then the Client must ensure that the Client and/or any third party so employed:
- (a) is appropriately licensed for the works being undertaken, and will provide evidence of the same upon request by the Contractor;
- (b) does not interfere with the progress of Works by the Contractor;
- (c) holds all relevant insurances as the Contractor is required to hold or as are otherwise required under this Contract;
- (d) co-operates with all requests or directives of the Contractor in relation to the timeliness and co-ordination of works to be performed;
- (e) co-operates as may be reasonably expected with all other persons on the site;
- (f) discusses any site issues directly with the Contractor and not with any of the Contractor's employees.
- In the event that the Client or the Client's third party employees do not comply with clauses 10.3 or 10.5 then the Contractor may require the non-compliant party to either leave and/or stay off the site as the Contractor may so direct.
- If the Client breaches this clause then the Contractor may (at the Contractor's sole discretion) either:
- (a) carry on the Works without incorporation of any Client supplied materials or works;
- (b) suspend the carrying out of the Works as per clause 22.1;
- (c) terminate this Contract in accordance with clause 22.
11. **Access**
- 11.1 The Client shall ensure that the Contractor has clear and free access to the site at all times to enable them to undertake the Works. The Contractor shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of the Contractor.
12. **Underground Locations**
- 12.1 Prior to the Contractor commencing the Works the Client must advise the Contractor of the precise location of all underground services on the site and clearly mark the same. The underground mains 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 site.
- 12.2 Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.
13. **Compliance and Consents**
- 13.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable, including any WorkSafe guidelines relating to building/construction sites and any other relevant safety standards or legislation.
- 13.2 Both parties acknowledge and agree to comply with section 14C (Responsibilities of product manufacturer or supplier) of the Building Amendment Act 2013, in respect of all building products to be supplied during the course of the Works.
- 13.3 Where the Client has supplied products for the Contractor to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose, quality and any faults inherent in those products. However, if in the Contractor's opinion, it is believed that the products supplied will not conform to regulations, then the Contractor 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.
- 13.4 The Client shall be responsible for:
- (a) obtaining and paying for any necessary consent, approvals or certificates required for the Works, including those required subsequent to commencement of the Works; and
- (b) applying for and obtaining the Code Compliance Certificate(s) for the Works.
- 13.5 The Contractor shall:
- (a) comply with the terms and conditions of all such consents and approvals in so far as such consents and approvals relate to the carrying out of the Works; and
- (b) provide the Client with all necessary information relating to the Works so that the Client may apply for a Code Compliance Certificate.

