

GERALDTON BUILDING SERVICES & CABINETS PTY LTD

STANDARD ORDER TERMS

1. Agreement Formation:

The Purchase Order given to the Supplier by Geraldton Building Services & Cabinets Pty Ltd (GBSC) (“**Purchase Order**”) and these Standard Order Terms constitute an offer. A binding contract between GBSC and the Supplier will come into existence on the earlier of the date in which the Supplier confirms acceptance of the offer, or the Supplier commences delivery of any of the Goods or the performance of any Services (“**Agreement**”). In the event of an inconsistency between the terms of these Standard Order Terms and the Purchase Order, the terms of the Purchase Order shall prevail.

2. Definitions:

In this Agreement:

“**Completion Date**” means the date set out in the Purchase Order;

“**Goods**” means any goods and/or materials as described in the Agreement and ancillary goods, and/or materials necessary for the provision thereof;

“**Services**” means any services described in the Agreement and ancillary services necessary for the provision thereof;

“**Site**” means the site set out in the Purchase Order;

“**Specification**” means (in order of priority)

- a. any description of or representation about the Works provided to GBSC or referred to in the Purchase Order, and
- b. the Supplier’s published specifications for the Works.

“**Works**” means the Goods and/or Services.

3. **Supplier Obligations:** The Supplier must provide the Works at the Site by the Completion Date and in accordance with any other instructions of GBSC. The Works must be provided in accordance with best industry standards and in accordance with any Specification. On providing any Goods, the Supplier must obtain the name and signature of GBSC’s employee that received the Goods.
4. **The Works:** Where GBSC is engaged on a project by agreement with a principal, the Supplier acknowledges that it has been made aware of the terms of that agreement and shall not do anything that may put GBSC in breach of that agreement. GBSC may inspect, expedite and monitor the Works and the Supplier shall give GBSC access to the Supplier’s premises for such purpose during its normal working hours. Any such measures by GBSC shall not relieve the Supplier from its obligations to comply with the Agreement and shall in no way impair GBSC’s right to require subsequent correction of non-conforming Works.

5. **GBSC Obligations:** GBSC must pay the Supplier the price set out in the Purchase Order for the provision of the applicable Works ("**Price**"). Unless expressly stated to the contrary, the Supplier bears all risks and costs (whether or not ascertainable at the date of the Agreement) of providing the Works and complying with its obligations under the Agreement.

6. **Failure of Goods:** If the Works do not comply with:

- a. any Specification; or
- b. best industry standards;

GBSC may terminate this Agreement in accordance with the termination clause 20 or require the Supplier to promptly modify or re-supply the Works so that they comply with such requirements. Acceptance by or payment by GBSC does not constitute acceptance by GBSC that any of the Works comply with the Agreement.

7. **Price:** The Price is fixed and includes all taxes, levies, duties, insurance, packaging and delivery costs. The total amount payable by GBSC under this Agreement will not exceed the Price set out in this Agreement.

8. **Payment:** Unless otherwise agreed, the Supplier shall invoice GBSC only upon the performance of all of the Supplier's obligations under the Agreement. Subject to clauses 9 and 10, GBSC will pay the invoice (less any amounts due to GBSC from the Supplier) 30 days End of Month. GBSC is entitled to withhold payment of any invoice to the extent that it relates to part of the Works that does not comply with the requirements of the Agreement.

9. **Set off:** GBSC may set off any of the following amounts against any amount GBSC owes the Supplier:

- a. any amount the Supplier is required to pay under this Agreement;
- b. any costs GBSC incurs by doing something the Supplier is required to do but fails to do under the Agreement;
- c. any amount the Supplier owes GBSC under any other Agreement; and
- d. any amount by which, in GBSC's opinion, the value of the Works is diminished as a result of the Supplier's failure to comply with the Agreement.

10. **Payment Dispute:** If GBSC does not pay the invoice in full within the time provided in the Agreement:

- a. GBSC may reject or dispute the whole or part of the invoice in writing (including by email) to the Supplier; otherwise;
- b. the invoice is deemed disputed and this is GBSC's response to the invoice.

11. **Risk and Title:** Risk in Goods will pass to GBSC when the Goods are accepted by GBSC at the Site. Title in the Goods will pass to GBSC on the earlier of delivery of the Goods at the Site and the time of payment for the

Goods.

12. Cancellation: GBSC may cancel or reduce the quantity of the Works by notifying the Supplier before the relevant Completion Date or if the Supplier fails to supply the Works by the Completion Date. GBSC will not be liable for any loss, damage, cost, amount or expense for cancelled Works.

13. Warranty: The Supplier warrants:

- a. that all Goods supplied:
 - i. are new and in good condition;
 - ii. comply with all laws, by-laws, requirements of authorities and utilities having jurisdiction over the Goods and the Site, relevant Australian standards and industry codes;
 - iii. are free from defects in design, materials and workmanship;
 - iv. are of good and merchantable quality and fit for their intended purposes;
 - v. comply with any Specification; and
 - vi. are free from any charge or encumbrance including intellectual property rights; and
- b. that any Services supplied by the Supplier will be supplied with:
 - i. the degree of skill, care and diligence that would be expected of a skilled professional experienced in providing the same or similar services and will be free of intellectual property rights, claims and encumbrances;
 - ii. comply with all reasonable directions of GBSC;
 - iii. comply with all GBSC conduct policies (as notified to the Supplier by GBSC from time to time), laws, by-laws, requirements of authorities and utilities having jurisdiction over the matters the subject of the Agreement and the Site, relevant Australian standards and industry codes that relate to the Services; and
 - iv. due expedition and without delay.

14. Breach of Warranty: If the Supplier becomes aware, or GBSC notifies the Supplier, that the Works fail to comply with the warranties given under this Agreement, the Supplier must, without prejudice to any other rights of GBSC:

- a. in the case of the warranties provided under paragraph 13(a), for a period of 12 months from the acceptance of the Goods by GBSC, fix any non-compliance; and
- b. in the case of any other warranty provided under this Agreement, promptly (at GBSC's option):
 - i. remedy that failure (including by replacing, re-supplying or re-performing the Works);
 - ii. provide to GBSC a full refund of the price paid for the Works; or
 - iii. deduct in accordance with GBSC's discretion the price paid for the Works or from any amounts owing to the Supplier.

15. Insurance: The Supplier will obtain insurance to cover the Works, its public liability, workers' compensation insurance according to cautious, prudent and

best practice risk management.

16. **Indemnity:** The Supplier indemnifies GBSC against all losses and damages (on a full indemnity basis and whether incurred by or awarded against GBSC) that GBSC may sustain or incur as a result, whether directly or indirectly, arising out of:

- a. a breach of the Agreement by the Supplier;
- b. any negligent wilful, reckless or unlawful act or omission of the Supplier or other employees, agents or Suppliers;
- c. a claim, demand, suit, action or proceeding by a third party arising from an act or omission of the Supplier in connection with this Agreement whether negligent or not; or
- d. any act or omission of the Supplier in connection with this Agreement resulting in or contributing to:
 - i. claims by any third party against GBSC in respect of personal injury or death; or
 - ii. loss of or damage to GBSC's or a third party's physical property.

17. **Bar on Claims:** Except as provided for elsewhere in this Agreement, the Supplier shall not have any right to make a claim for money against GBSC arising out of the Works or the Agreement unless the Supplier gives to GBSC:

- a. a written notice not later than 7 days after the first occurrence of the circumstances on which the claim is based, that it intends to make a claim; and
- b. a further written notice within 7 days of the first notice providing detailed particulars of the basis for and the quantification of the claim.

18. **Variations:** GBSC may give notice in writing expressed as a "**Variation Notice**" directing the Supplier to alter, omit, add or otherwise vary the Works and the Supplier must give GBSC a detailed breakdown of the proposed increase or decrease in the Price in the Agreement as a result of the variation. Unless GBSC and the Supplier agree on the price to alter, omit, add or otherwise vary the Works in writing, the price shall be determined by GBSC in its sole discretion using applicable rates set out in the Agreement or otherwise reasonable rates and prices. The Supplier shall not be entitled to and is barred from additional payment from GBSC for a variation unless the Supplier has received a "**Variation Notice**" in writing from GBSC.

19. **Final Payment Claim:** Within 28 days of the completion of the Works, the Supplier must provide GBSC a final payment claim headed "**Final Payment Claim**". The Supplier must include in the Final Payment Claim all claims the Supplier makes against GBSC relating to the Agreement. GBSC is released from and the Supplier is barred from making any claim for cost, loss, expense, damage and liability in relation to the matters the subject of the Agreement unless such claim is set out in a "**Final Payment Claim**" issued strictly in accordance with this clause.

20. **Termination:** GBSC may terminate this Agreement:

- a. for any reason whatsoever including for its own convenience, by written notice and must pay for the Goods supplied and Services performed to the date of termination (without any other liability); or
- b. immediately (without any liability) by giving notice to the Supplier if the Supplier:
 - i. commits a breach of this Agreement which is not rectified within 7 days of notification of the breach by GBSC; or
 - ii. becomes insolvent or an administrator, receiver, manager, trustee in bankruptcy, provisional liquidator or liquidator is appointed.

After termination pursuant to clause 20(b), GBSC is entitled to recover from the Supplier any costs, losses or damages suffered or incurred by it arising out of or in connection with such termination.

21. **Time:** The Supplier shall promptly, and in any event within 7 days of its occurrence, notify GBSC of any delay which may affect the Completion Date. If the delivery of the Works is delayed through any act or omission of GBSC, its employees or agents, GBSC shall grant a reasonable extension of time, but shall be under no obligation to do so if notification of delay has not been made as provided herein. The Supplier's entitlement to an extension of time to the Completion Date shall be the Supplier's sole remedy for delay or disruption of the Works, whether caused by an act or omission of GBSC, a breach of Agreement by GBSC, negligence or other default by GBSC or other default of GBSC, or howsoever otherwise caused.
22. **Civil Liability:** It is agreed that Part 1F of the Civil Liability Act 2002 (WA) is excluded from operation with respect to all rights, obligations and liabilities whatsoever arising in relation to, out of or in connection with this Agreement.
23. **Disputes:** In the event of any dispute or difference arising out of or in connection with the Agreement (referred to herein as "**dispute**"), the party asserting the dispute must give the other party written notice of the existence of such dispute which includes sufficient detail to identify the cause and nature of the dispute. Within 14 days of the issue of a notice under this clause, representatives of the parties must meet and undertake genuine and good faith negotiations with a view to resolving the dispute. If the dispute is not resolved within 14 days of such meeting either party may refer the dispute to litigation.
24. **Entire Agreement:** This Agreement contains the entire agreement between GBSC and the Supplier. No prior or subsequent representation or agreement (whether verbal or in writing) by the parties or their respective employees, representatives or agents will bind the parties unless such representation or agreement is detailed in this Agreement. No terms or conditions contained on any invoice, delivery document, plant hire docket or the like provided by the Supplier will have any effect except to the extent that GBSC agrees in writing to amend this Agreement to incorporate those terms. If a clause of this

Agreement is void or unenforceable, it shall be read down, or if incapable of being read down, it may be severed without affecting the enforceability of the other provisions in the Agreement.

25. **Compliance with Law:** The Supplier must comply with all relevant legislation and regulations in the performance of this Agreement.
26. **Applicable Law:** The laws of Western Australia apply to this Agreement and the parties submit to the non-exclusive jurisdiction of the Courts of Western Australia, and where applicable, the Commonwealth.