

**CANVALE PTY LTD**  
**TERMS & CONDITIONS OF CONTRACT**

**1. The Parties**

The Contract is between the Client and CANVALE. CANVALE may sub-contract the performance of any part of the Contract to any person on any terms at CANVALE's sole discretion.

**2. Acceptance of these Terms & Conditions**

- 2.1 Unless otherwise agreed in writing, the Contract sets forth the entire agreement between the Client and CANVALE and supersedes all enquiries, proposals, agreements, negotiations and commitments, whether written or oral made prior to the date of execution of or during the term of the Contract. Provisions of these Terms and Conditions may be changed only by writing executed by CANVALE and the Client.
- 2.2 The Client by signing the Order Schedule acknowledges:
- (a) receipt of the copy of the Terms and Conditions;
  - (b) having read the Terms and Conditions;
  - (c) having had the opportunity of obtaining independent legal advice with respect to the Terms and Conditions; and
  - (d) that the Client agrees to be bound by the Terms and Conditions.
- 2.3 If the Client does not return a signed copy of these Terms and Conditions to CANVALE but continues to provide information or instructions to CANVALE, the Client will be deemed to have accepted these Terms and Conditions and these Terms and Conditions will override any conditions contained in the Client's order.
- 2.4 Any supply of Goods or Services by CANVALE to the Client made after the date of acceptance of these Terms and Conditions is a supply pursuant to the supply agreement constituted by these Terms and Conditions and the relevant Order Schedule accepted by CANVALE and any such supply does not give rise to a new or separate agreement.

**3. Contract Price**

- 3.1 The Contract Price is open for acceptance for a period of 14 days from the date of the Order Schedule and will remain unchanged during that time.
- 3.2 The Contract Price is payable in accordance with the Order Schedule.
- 3.3 CANVALE reserves the right to charge interest and recover costs associated on overdue accounts (see Clause 23 Costs Recoverable).
- 3.4 Unless otherwise specified in writing, the Contract Price does not include:
- (a) any alteration or rectification to ceilings, amenities, fire stairs, windows or external works;
  - (b) any construction of fire walls and/or doors;
  - (c) any alteration to existing building services including but not limited to fire control, sprinkler systems, smoke detectors, exit and emergency lighting, plumbing and drainage, hydraulics, air conditioning or electrical mains power supply;
  - (d) any fees of any consultants and professionals including but not limited to electrical, mechanical, and structural engineers or consultants;
  - (e) any alteration to electrical work including ducted skirting, power points, lighting work done between switchboards or on switchboards, any electronic installations, data cabling, telephone cabling or telephone systems;
  - (f) building or development applications to Council or any regulatory authority; or
  - (g) any other items or matters not specifically referred to in the Order Schedule.
- 3.5 The Client may only retain Payments where there is a Dispute (see Clause 25 Disputes) and only the amount relating to the Goods and/ or Services in Dispute may be retained, but not exceeding 2.5% of the Contract Price. All outstanding Payments must be made in full by the Client within 7 days of the resolution of the Dispute.
- 3.6 All Goods delivered and / or Services being carried out by CANVALE may cease if any Payments are not made by the Client within 7 days of their due date. In that event, a recommencement fee of \$1,200.00 will be payable by the Client, together with a charge for travelling time if applicable, prior to the recommencement by CANVALE of delivery of Goods and / or provision of Services. Any delay in Payments may affect anticipated completion date.

**4. Cost Overruns**

CANVALE reserves the right to pass on any product price rise incurred from the date of quotation to the date of invoicing.

**5. Retention of Title**

- 5.1 CANVALE reserves the following rights in relation to the Goods until all monies owed by the Client to CANVALE are paid in full:
- (a) Ownership, title and property in the Goods;
  - (b) to enter the Client's premises (or the premises of any associated company or agent where the Goods are located) and retake possession of the Goods supplied to the Client by CANVALE and the Client hereby authorises and allows CANVALE and/or its representatives, servants, agents or employees to enter the premises upon which goods are situated for the purpose of retaking possession of the goods; and
  - (c) the Client indemnifies CANVALE against any liability for trespass, action, damage, loss, liability, cost, charge, expense, outgoing or payment which CANVALE suffers, incurs, or is liable to in respect of CANVALE's exercise of its rights under Clause 5.1(b); and
  - (d) to keep or resell any Goods repossessed pursuant to 5.1(b) above.
- 5.2 While any part of the contract is unpaid, if the client or anyone representing the client sells any of the Goods, or products, the Client shall hold such part of the proceeds of any such sale as represents the unpaid Contract Price of the goods sold or used in

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the manufacture of the Goods sold in a separate identifiable account as the beneficial property of CANVALE and shall pay such amount to CANVALE upon request.

- 5.3 The Client hereby charges and mortgages in favour of CANVALE to secure the repayment of the debt and all monies which may become owing by the Client to CANVALE hereunder all the Clients' estate and interest in all property both real and personal present and future.

#### 6. PPSA

- 6.1 Defined terms in this clause have the same meaning as given to them in the PPSA.
- 6.2 CANVALE and the Client acknowledge that these Terms constitute a Security Agreement and entitle CANVALE to claim:
- (a) a Purchase Money Security Interest ("PMSI") in favour of Company over the Collateral supplied or to be supplied to the Client as Grantor pursuant to these Terms;
  - (b) a security interest over the proceeds of sale of the Collateral referred to in (a) as original collateral; and
  - (c) a security interest over all of the personal property of the Client pursuant to with clause 5.3.
- 6.3 The goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods" acquired by the Client pursuant to these Terms.
- 6.4 The Proceeds of sale of the Collateral referred to in clause 8.2(a) falls within the PPSA classification of "Account".
- 6.5 CANVALE and the Client acknowledge that CANVALE, as Secured Party, is entitled to register its Security Interest in the Collateral supplied or to be supplied to the Client pursuant to these Terms and in the relevant Proceeds.
- 6.6 CANVALE and the Client acknowledge that CANVALE, as Secured Party, is entitled to register its Security Interest in the All Present and After Acquired Property of Client pursuant to these Terms.
- 6.7 To the extent permissible at law, the Client:
- (a) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Client to CANVALE.
  - (b) agrees to indemnify CANVALE on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the:
    - (i) registration or amendment or discharge of any Financing Statement registered by or on behalf of CANVALE; and
    - (ii) enforcement or attempted enforcement of any Security Interest granted to CANVALE by the Client;
  - (c) agrees that nothing in sections 130 and 143 of the PPSA will apply to these Terms or the Security under these Terms;
  - (d) agrees to waive its right to do any of the following under the PPSA:
    - (i) receive notice of removal of an Accession under section 95;
    - (ii) receive notice of an intention to seize Collateral under section 123;
    - (iii) object to the purchase of the Collateral by the Secured Party under section 129;
    - (iv) receive notice of disposal of Collateral under section 130;
    - (v) receive a Statement of Account if there is no disposal under section 132(4);
    - (vi) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
    - (vii) receive notice of retention of Collateral under section 135;
    - (viii) redeem the Collateral under section 142; and
    - (ix) reinstate the Security Agreement under section 143.
- 6.8 All payments received from the Client must be applied in accordance with section 14(6)(c) of the PPSA.

#### 7. Responsibility

- 7.1 Unless otherwise specified, risk in the Goods passes to the Client on delivery of those Goods to the destination stated in the Order Schedule.
- 7.2 Where the Client has requested a Special Delivery, risk in the Goods passes to the Client upon the Goods leaving CANVALE's premises. CANVALE will not be liable for damage, shortage or loss transit of the Special Delivery Goods.

#### 8. The Client's Obligations

- 8.1 The Client must nominate one or more persons to be the Client's authorised representative who must be present on Site or readily contactable by CANVALE at all times for clarification or authorisation on any matters relevant to the supply of the Goods and / or Services.
- 8.2 The Client must ensure that the Site is cleared and the Preparatory Works are completed before CANVALE's commences the Works to enable CANVALE to proceed without delay.
- 8.3 The Client must provide and maintain, at the Client's own cost, appropriate arrangements for the security of the Site and its contents including the Goods, for the duration of the Contract. This includes extra security as required outside of Normal Working Hours.
- 8.4 The Client must provide CANVALE, free of charge, toilet facilities and other amenities including electrical and telephone services

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on Site.

- 8.5 The Client and Client's staff are not to enter the Site prior to handover unless accompanied by a CANVALE staff member or an CANVALE appointed representative.

**9. Delivery & Access**

- 9.1 The Client must ensure that CANVALE has full, clear and unrestricted access for Delivery of Goods and provision of Services and for hoisting of men and materials on Site at all times as notified by CANVALE.
- 9.2 The Contract Price, the Delivery, the Services and Practical Completion dates may be varied by CANVALE in the event of a breach of this clause or clause 8 and the Client shall be liable for any extra charge, loss or expense incurred by CANVALE.
- 9.3 Staged deliveries and installations will require extra time and may incur extra cost. These costs will be payable by the Client.

**10. Authority to Exclude Unauthorised Persons From Site**

- 10.1 The Client appoints CANVALE and the senior employee/contractor of CANVALE on site, as its agent for the period of the Contract for the following purposes:
- (a) To permit any persons to enter upon the Site;
  - (b) To refuse any unauthorised persons the right to enter and to prevent any such persons from entering upon the Site; and
  - (c) To remove any unauthorised persons from the Site.
- 10.2 Until CANVALE issues the Practical Completion Notice, access to the Site by the Client or any of its staff or representatives is strictly forbidden unless approved in writing by an authorised representative of CANVALE.
- 10.3 If approval is given by CANVALE, the Client or any of its staff or representatives can only access the Site while accompanied by an authorised representative from CANVALE.

**11. Risk & Insurance**

- 11.1 CANVALE will maintain statutory workers compensation insurance and public liability insurance of at least \$10,000,000 and motor vehicle third party cover.
- 11.2 The Client will maintain property and public liability insurance for the whole value of the Contract from CANVALE's Commencement Date to Final Completion for the benefit of CANVALE.
- 11.3 The Client will maintain all risks insurance for the full value of the Works that names CANVALE as a person or entity to which cover is extended to.
- 11.4 CANVALE's insurance policies are for CANVALE's own benefit only and do not cover the Client's risks or other contractors engaged by the Client.
- 11.5 CANVALE accepts no responsibility in relation to the fire proofing, lack of fire proofing, fire detection, sprinkler systems, alarm, suppression, or other systems (either new or existing), or incorrect fire rating with respect to any columns, walls, doors, fire alarm panels, smoke detectors, heat sensors or any other items on Site, including but without limiting the generality of the foregoing fire detection, sprinkler systems, alarm, suppression, or other systems (either new or existing), fire escapes, fire escape access and fire escape egress.
- 11.6 CANVALE accepts no responsibility in relation to the Disabled/Accessible/Ambulant access, lack of Disabled/Accessible/Ambulant access or incorrect Disabled/Accessible/Ambulant access with respect to any infrastructure or building requirements relating to Disabled/Accessible/Ambulant access ramps which is not limited to lifts, tactiles, steps, stair nosings, handrails, door widths, door openings, door closes, the interpretation, or misinterpretation of the Building Code, Disabled/Accessible/Ambulant Access Regulations, or any other items on Site, including but without limiting the generality of the foregoing Disabled/Accessible/Ambulant access, or Disabled/Accessible/Ambulant egress.
- 11.7 **Asbestos and/or Hazardous Materials;** Prior to commencement on site, if requested by CANVALE, The Client is required to organise for the Site to be audited for hazardous building materials, for example, but not limited to, asbestos, lead based paint, polychlorinated biphenyls and synthetic mineral fibre. The Client represents that the Site where the works are being carried out does not contain asbestos and / or other hazardous materials. The Contract does not contemplate the removal of, testing for appropriate corrective work and any other additional expenses incurred by the corrective work. All costs relating to the removal of, testing for appropriate corrective work and any other additional expenses incurred by the corrective work are to be covered by the Client. Any delays in Practical Completion caused by the presence or rectification of Asbestos and/or Hazardous Materials shall deem the liquidated damages clause to be null and void unless an updated agreed date is confirmed in writing by CANVALE. The costs of such delay will be carried by the Client..
- 11.8 CANVALE is not responsible for other contractors engaged by the Client including but not limited to matters relating to insurance, quality of workmanship, timelines and site cleanliness.
- 11.9 It is the sole responsibility of the Client to ensure that adequate insurance cover is in place for Public Liability, Property, Plant and Assets while CANVALE is carrying out Works. This insurance is to cover the Client's Property, Plant and Assets regardless of the source of any damage which occurs.
- 11.10 The Client will ensure that adequate Workers Compensation Insurance is in place to cover its own staff while CANVALE is carrying out Works for the Client at the Site. The Client's cover will apply to the Client's staff or representatives on Site, if there is any claim.

**12. Date of Works**

- 12.1 CANVALE will endeavour to deliver Goods and / or complete the Services by the date or dates specified in the Order Schedule but will not, unless otherwise agreed in writing, be held responsible for any loss or damage of any kind if Goods are not delivered and / or Services are not completed by the agreed date or dates.
- 12.2 Any variation to the Order Schedule or any delay in Payments may affect the anticipated date of Practical Completion.

**13. Council and Statutory Approvals**

- 13.1 Unless otherwise stated in the Order Schedule, the Client is solely responsible for identifying and obtaining approvals prior to CANVALE's commencing the Work from Council and other Government bodies, landlords or other parties having any interest

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in the building where the Goods and/or Services are to be delivered and/or installed. The Client will indemnify CANVALE for any liability arising from identifying and obtaining any such approvals or the failure to do so.

- 13.2 CANVALE will carry out the requisite Works upon the basis that the Client has obtained all approvals required as referred to in Clause 13.1.

#### 14. Rectification or Re-Usage of Existing Client Material

The Order Schedule is submitted on the basis that any of the Client's materials that are to be used in connection with the Services are of a quality and condition that are fit for the intended purpose, acceptable to CANVALE and conform to relevant Government regulations, including product safety standards. At the Client's cost, CANVALE is authorised to replace any materials not so conforming or proving to be defective.

#### 15. Variation by Client & Extras

15.1 Any Variation to must be in agreed in writing between CANVALE and the Client prior to being carried out. CANVALE reserves the right to revise and amend the Contract Price if there are any such Variations.

15.2 Any Variations after the signing of the Contract may incur an administration fee to be charged by CANVALE in addition to the cost of the Variation separately charged.

15.3 Where any Variation is necessary:

- (a) to comply with any written direction lawfully given by a building surveyor or other person acting under a written law; or
- (b) by virtue of circumstances that could not reasonably have been foreseen by CANVALE at the time when the Contract was entered into

then CANVALE shall be entitled to payment for such a Variation provided that before carrying out the work relating to the Variation, CANVALE gives to the Client a statement setting out the reason for, and the cost to be incurred on account of the variation, together with a copy of any written direction referred to in Clause 15.3(a).

#### 16. Specifications

16.1 All specifications, drawings and particulars of weight or / and dimensions stated in the Order Schedule are approximate only and any deviation from any of these does not vitiate the Contract or form grounds for any claim against CANVALE.

16.2 The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of any Contract for the sale of the Goods or description applied to the Goods.

16.3 Where specifications, drawings or other particulars are supplied by the Client, CANVALE's price is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by CANVALE and set out in the Order Schedule, then such increase or decrease are to be adjusted on a unit rate basis according to unit prices as set out in the Order Schedule.

#### 17. Guarantee & Warranty

17.1 Unless otherwise specified in the Order Schedule, CANVALE's liability for Goods manufactured by it is limited to making good any defects or repairing the defects at CANVALE's option by replacement, within the Defects Liability Period so long as:

- (a) defects have arisen solely from faulty materials or workmanship;
- (b) the Goods have not received maltreatment, inattention or interference;
- (c) accessories of any kind used by the Client are manufactured by or approved by CANVALE;
- (d) any defects in the Goods are promptly reported to CANVALE within 10 days of Practical Completion;

17.2 Where the Client has nominated a supplier, sub-contractor, system or material, then the Client will take on all responsibility of obtaining relevant warranties and such warranties will be excluded from Canvale's requirement to make good defects under clause 17.1.

17.3 Unless otherwise specified in the Order Schedule, the Defect Liability Period will be 21 days from Practical Completion.

17.4 If the Goods are not manufactured by CANVALE the guarantee of the manufacturer of those Goods is accepted by the Client and is the only guarantee given to the Client in respect of the Goods. CANVALE agrees to assign to the Client on request made by the Client the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to CANVALE under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.

17.5 CANVALE is not liable for and the Client releases CANVALE from any claims in respect of faulty or defective design of any goods supplied or any proposed office layout unless such design has been wholly prepared by CANVALE and the responsibility for any claim has been specifically accepted by CANVALE in writing. In any event, CANVALE's liability under this paragraph is limited strictly to the replacement of defective parts in accordance with Clause 17.1.

17.6 To the extent permitted by law and except as provided in these Terms and Conditions, all express and implied warranties, guaranties and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose or as to design, assembly, installation, material or workmanship or otherwise are expressly excluded. CANVALE is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the goods or arising out of CANVALE's negligence or in any way whatsoever.

17.7 CANVALE's liability for a breach of a condition or warranty implied by the *Competition and Consumer Act 2010* is limited to:

- (a) In the case of Goods, any one or more of the following:
  - (i) The replacement of the Goods or the supply of equivalent goods;
  - (ii) The repair of the Goods;
  - (iii) The payment of the cost of replacing the Goods or acquiring equivalent goods;
  - (iv) The payment of the cost of having the Goods repaired; or
- (b) In the case of Services:

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- (i) The supply of the Services again; or
- (ii) The payment of the cost of having the Services supplied again.

17.8 Unless otherwise agreed in writing, the cost of any freight and/or delivery of Goods from the Client to CANVALE for repair or replacement are to be paid by the Client.

17.9 CANVALE shall be deemed to have been discharged from all liability in respect of the works carried out and goods supplied whether under contract, in tort, in equity, under statute or otherwise, at the expiration of the defect liability period specified in the accompanying order schedule, or if no date is specified, at the expiration of 21 days from Practical Completion.

#### 18. Building Alteration

18.1 The Client warrants to CANVALE that the building is capable of being altered in the manner proposed in the Order Schedule without any other work of any kind whatsoever being required.

18.2 The Client will bear the full costs associated with any work required over and above as stated in the Order Schedule.

#### 19. Delays and Extension of Time

19.1 Should the progress of the Works be delayed by any of the following causes or conditions resulting therefrom:

- (a) on account of authorised variations or extras;
- (b) by a suspension of the Works under Clause 20;
- (c) by inclement weather or conditions resulting from inclement weather;
- (d) in consequence of proceedings being taken or threatened by, or disputes with, adjoining or neighbouring owners or residents;
- (e) by reason of any civil commotion, or combination of workmen or strikes or lockouts affecting the Works or affecting the manufacture or supply of materials for the Works;
- (f) any act, default or omission on the part of the Client;
- (g) delay on the part of any local or other authority in granting or issuing any necessary consent or approval;
- (h) by any other matter, cause or thing whatsoever beyond the control of CANVALE including unavailability of labour or materials;

Then in any such case, CANVALE shall be entitled to a fair and reasonable extension of time in which to bring the Works to Practical Completion.

19.2 Except in the case of paragraph 19.1(c), CANVALE shall be entitled to be paid reasonable costs arising from any extension of time.

#### 20. Suspension of Works

20.1 Should the Client fail to pay any progress payment or commit any other breach of these Terms and Conditions, CANVALE may, without prejudice to their right to terminate the contract, give 10 days written notice of its intention to suspend the Works. If the Client's default continues for 10 days after such notice, then CANVALE may suspend the Works. If CANVALE suspend the Works they shall promptly give notice of such suspension in writing to the Client. CANVALE shall lift the suspension within 20 days of the progress payment being made or the breach being remedied and the time in which to bring the Works to Practical Completion shall be extended by the period equivalent to the number of days which the Works were suspended and any consequential delays resulting from the suspension.

20.2 CANVALE shall be entitled to be paid reasonable costs arising from any suspension of the Works under clause 20.1 plus an administration start up fee.

#### 21. Cancellation by the Client

The Order Schedule accepted by the Client cannot be cancelled/ terminated except with CANVALE's written consent. The Client must indemnify CANVALE against all loss and damage in relation to any part of the Order Schedule that is cancelled/ terminated.

#### 22. Force Majeure Event

22.1 If CANVALE is wholly or partially prevented from complying with its obligations under the Contract by a Force Majeure Event then its obligations to perform in accordance with this Contract will be suspended for the duration of the delay arising out of the Force Majeure Event. CANVALE must notify the Client of a Force Majeure Event as soon as possible and the extent to which CANVALE is unable to perform its obligations.

22.2 If a force Majeure Event lasts longer than 10 days, CANVALE or the Client may terminate the Contract by giving written notice to the other party. CANVALE will be entitled to payment of all relevant costs incurred up to the termination date.

#### 23. Practical Completion

23.1 Practical Completion is determined by CANVALE and will be at the stage when the Works are completed except for any omissions or defects which do not prevent the Works from being reasonably capable of being used for their intended purpose by the Client. All invoices must be paid prior to the date of Practical Completion except for the "Final Completion" invoice.

23.2 Within 14 days after Practical Completion the Client shall give CANVALE notice in writing, of those matters and things (if any) which the Client considers are required by the Contract to be done for Final Completion. CANVALE shall give notice in writing within 10 days of any dispute in relation to this notice.

23.3 In the event that the owner does not give any written notice within the time specified in paragraph 22.2, the Works shall be deemed to have reached final completion pursuant to the provisions of paragraph 22.1.

23.4 Should the Client or any tenant of his or their employees or agents take possession of the Works or any part thereof, or occupy the space or part thereof, the date of Practical Completion shall be the date possession/occupation has taken place, unless Practical Completion already has been reached having regard to the provisions of this Clause.

23.5 The Works shall be at the risk of the Client in all respects upon Practical

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**24. Costs Recoverable**

- 24.1 Should the Client default in the payment of any monies due, then all monies due to CANVALE shall immediately become due and payable and shall be paid by the Client within 7 days of the date of demand and CANVALE shall be entitled to charge interest (compounded) at the rate of 2.00% per month on all overdue accounts from the date of due payment until the date of actual payment.
- 24.2 Any expenses, costs or disbursements incurred by CANVALE in recovering any outstanding monies including debt collection agency fees, commission and any fees paid to CANVALE's solicitors, lawyers, QC's or other legal representation (on an indemnity basis) shall be paid by the Client on a solicitor/client indemnity basis.

**25. Liquidated & Ascertained Damages**

- 25.1 Liquidated and ascertained damages only apply if there is a written agreed Practical Completion date specified in this Contract.
- 25.2 The Client shall give CANVALE notice in writing, within 7 days of the written agreed Practical Completion date of the matters and things (if any) which the Client considers are required by the Contract to be done for Practical Completion.
- 25.3 CANVALE can give notice in writing of any dispute in relation to this notice.
- 25.4 If CANVALE shall fail to bring the Works to Practical Completion as provided by Clause 23, or within any agreed extended time fixed pursuant to Clause 19, then CANVALE shall pay or allow to the Client a sum calculated at the rate of \$400 per week as liquidated and ascertained damages for the period during which the Works shall so remain not practically completed. CANVALE's total liability will be limited to a maximum of 3.5% of the contract price. Liquidated and Ascertained Damages are the clients sole and exclusive means for compensation under this agreement.

**26. Disputes**

- 26.1 Should any dispute or difference arise between the Client and CANVALE in connection with the Contract then;
- (a) The Party that alleges they have suffered some loss, or damage, or is otherwise aggrieved, shall give written notice to the other Party setting out the nature of the dispute, how the dispute arose, and the solution it seeks to the dispute.
- (b) Such notice must provide sufficient detail to identify the cause and nature of the dispute or difference.
- (c) Within seven (7) days of receipt of the Notice of Dispute the Parties must meet and take reasonable steps to resolve the dispute.
- (d) If the dispute cannot be resolved within seven (7) days from the date of the meeting the Parties may agree to mediation.
- (e) If the Dispute is submitted to mediation and the Parties do not within 14 days (or any longer period as the Parties agree) after the Dispute is submitted to Mediation, agree on:
- (i) A mediator and the mediator's compensation;
- (ii) The procedure for the mediation; or
- (iii) The timetable of each step of the procedure.
- The mediator will be appointed by the Australian Commercial Dispute Centre and mediation will be conducted in accordance with the Australian Commercial Dispute Centre's Mediation Guidelines in force at the time that the Dispute is referred.
- (f) If both Parties cannot agree to mediation the dispute must then be submitted for resolution by reference to Arbitration in accordance with the provisions of the *Commercial Arbitration Act 1985*.
- 26.2 The arbitrator shall be a person mutually agreed upon by the parties or, in the event that they fail to agree upon a choice within 7 days of it being requested, then the arbitrator shall be the President for the time being of the Master Builders Association of WA, or his nominee.
- 26.3 In seeking such nomination, the party who served notice under paragraph 25.1(a) shall deposit with the Master Builders Association of WA, the sum of \$300 by way of security for costs of the arbitrator.
- 26.4 Such security shall be applied in accordance with the directions from time to time of the arbitrator.
- 26.5 If the Dispute is not resolved within 30 days after the Dispute Notice, or where a Party has submitted the dispute to either mediation or arbitration, 60 days after the Dispute Notice (or any longer period the Parties agree), either Party who has complied with this clause (Clause 26) may end this dispute resolution process and commence court proceedings in relation to this dispute.
- 26.6 In the event of a payment dispute, under the relevant security of payment legislation, if either party makes an application for adjudication, the parties agree that the adjudicator shall be appointed by the Master Builders Association of the State or Territory in which the Site is located. In seeking such appointment, the party making the application for adjudication shall deposit with the relevant Master Builders Association the required security for the costs of the adjudicator (if any). Such security shall be applied in accordance with the directions of the adjudicator.
- 26.7 Nothing in this clause is intended to prevent a party from seeking urgent interlocutory orders or an injunction.

**27. Notices**

- 27.1 Except where otherwise expressly required, any notice necessary or required to be given under the Contract, shall be deemed to be sufficiently given if delivered by hand, emailed or sent by prepaid post addressed to the person to whom it is necessary or required to be given or left at the party's registered or notified address and shall, in the case of posting, be deemed to have been received at the expiry of 2 clear business days of posting.
- 27.2 All communications under the contract must be properly served in accordance with the above notice requirements.

**28. GST**

- 28.1 Amounts payable by the Client to CANVALE under this Contract are express exclusive of GST, unless expressly indicated by CANVALE as being otherwise. In respect of a taxable supply under this Contract, the Client must pay to CANVALE an additional amount in respect of that taxable supply equal to the GST payable in respect of that taxable supply.

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- 28.2 This additional payment by the Client must be made at the same time as the GST-exclusive consideration for the taxable supply is payable by the Client to CANVALE.
- 28.3 CANVALE will provide the Client with a tax invoice in respect of the taxable supply and GST amount payable.
- 28.4 The terms used in this clause that have defined meanings in the GST Act shall have the same meanings in this clause.

#### 29. General

- 29.1 Part or all of any clause of this Contract that is unenforceable will be severed from this Contract and will not affect the enforceability of the remaining provisions of this Contract.
- 29.2 No waiver of any of these Terms or failure to exercise a right or remedy by Company will be considered to imply or constitute a further waiver by Company of the same or any other term, condition, right or remedy.
- 29.3 CANVALE reserves the right to correct errors or omissions in the order of works, quotations, acknowledgements, orders or other documents relating to the goods or the agreement between CANVALE and the Company, whether or not the expressions "E&OE" is contained in the document.
- 29.4 In the event any work is required by CANVALE to resolve discrepancies between architects, engineers and working drawings then that work shall constitute a variation and shall be paid for in accordance with Clause 15.
- 29.5 The law of the State or Territory in which the Site is located applies to the Contract and Order Schedule and the parties submit to the exclusive jurisdiction of the Courts of that State or Territory for the resolution of any disputes in connection with this contract.

#### 30. Confidentiality

- 30.1 Neither the Client nor CANVALE shall disclose to third parties or use for any purpose (other than providing or benefiting from the Services) any Confidential Information disclosed by the other unless:
- (a) required by law;
  - (b) the information is already generally known to the public; or
  - (c) the disclosing party consents to the disclosure.
- 30.2 All documentation and materials containing Confidential Information provided by one party to the other shall be returned immediately upon the written request of that party or termination of the Contract.

#### 31. Definitions

- 31.1 "**Contract**" means the provision of Goods and/or Services under the Order Schedule subject to this Terms and Conditions.
- 31.2 "**Contract Price**" means the amount specified in the Order Schedule for the supply of Goods and/or Services.
- 31.3 "**Client**" means the individuals, corporations or the proprietors of unincorporated entities that are contracting for the supply of the Goods and/or Services and their employees, agents, contractors and sub-contractors.
- 31.4 "**Delivery**" means the delivery of Goods to the Client's premises or the nominated carrier's depot.
- 31.5 "**Dispute**" means a dispute, a claim, demand, action, proceedings made by the Client in good faith and not frivolous or vexatious against CANVALE arising out of the Contract in relation to Practical Completion or Final Completion.
- 31.6 "**Final Completion**" means the signing off by the CANVALE Contracts Administrator that the Goods are delivered or the Services are completed to a Commercial Standard.
- 31.7 "**Force Majeure Event**" means an event affecting a party's ability to perform its obligations under this Contract that is outside that party's reasonable control including, without limitation, flood, drought, storm, lightning, act of God, peril of sea or air, explosion, sabotage, accident, embargo, labour dispute or shortage, riot, civil commotion, any terrorist activity, act of war and war.
- 31.8 "**Goods**" means goods specified in the Order Schedule.
- 31.9 "**GST**" means the goods and services tax imposed by the GST Act.
- 31.10 "**GST Act**" means the *A New Tax System (Goods and Services Tax) Act 1999*.
- 31.11 "**Handover**" will be when all monies are received by CANVALE, excluding the final completion invoice, and is decided by an authorised CANVALE representative and the client is then able to access the works.
- 31.12 "**CANVALE**" refers to CANVALE Pty Ltd and any of CANVALE's associated entities, employees, agents, contractors or subcontractors.
- 31.13 "**CANVALE's Commencement Date**" means 14 days from payment of the deposit.
- 31.14 "**Interest**" means two percent (2%) per month.
- 31.15 "**Normal Working Hours**" is the time between 7.30 am and 4.30 pm Monday to Friday, excluding public holidays in the State where the Site is located.
- 31.16 "**Order Schedule**" means the most current written quotation for the supply of Goods and/or Services.
- 31.17 "**Payments**" means deposit prior to commencement, progress payments, instalments and final instalment and / or payment within 21 days of Practical Completion.
- 31.18 "**PPSA**" means the *Personal Property Securities Act 2009 (Cth)*
- 31.19 "**Practical Completion**" in relation to the Services occurs when the building works are complete except for minor finishes, omissions and defects that do not prevent the building works being reasonably capable of being used for their intended purpose, or at the time anyone takes possession of any part of the works, or occupies any part of the space where works have been carried out.

**CANVALE PTY LTD**

**TERMS & CONDITIONS OF CONTRACT**

- 31.20 "**Preparatory Works**" means the preparatory works to be completed by the Client as listed in the Order Schedule.
- 31.21 "**Services**" means the services specified in the Order Schedule.
- 31.22 "**Site**" means the premises of the Client at which the Services are to be carried out by CANVALE.
- 31.23 "**Special Delivery**" means an arrangement other than for the Delivery of Goods to the Client's premises or the nominated carrier's depot.
- 31.24 "**Terms and Conditions**" means the terms and conditions set out in this agreement;
- 31.25 "**Variations**" means any variations to the Order Schedule.
- 31.26 "**Works**" Means the provision of Goods and/or Services under the Order Schedule subject to this terms and conditions agreement.