

TERMS & CONDITIONS

1. Acceptance of these Terms and Conditions

1.1 Unless otherwise specified in the Order Schedule, by signing, or otherwise adopting, these Terms & Conditions of Contract, the Customer accepts the same and agrees that they override all other terms and conditions contained in any other documents including the Customer's terms and conditions.

2. The Parties

2.1 The Contract is with Bentley Workspaces Pty Ltd (Supplier) and is for the supply of the Goods and or Services specified in the Order Schedule. The Supplier may sub-contract the performance of any part of this Contract to any person on any terms at the Supplier's sole discretion.

3. Contract Price

3.1 In addition to the Customer's payment obligations pursuant to clause 10.1, the Customer must pay the Supplier a deposit on acceptance of the Order Schedule and the balance within 14 days of Delivery in respect of Goods or Practical Completion in respect of Services; or a deposit when the Customer signs the Order Schedule and, if the Order Schedule specifies a payment schedule, then the Customer must pay the balance in accordance with the payment schedule.

3.2 Delay in payment of the balance incurs interest at 10% per annum calculated daily by reference to amounts outstanding and compounding daily.

3.3 The Contract Price stated in an Order Schedule will remain unchanged for 14 days from the date of that Order Schedule.

3.4 Where there is a Dispute, the Customer may only retain the portion of the balance that relates to the portion of Goods or Services in Dispute, but not exceeding of 2.5% of the Contract Price. All money outstanding must be paid within 7 days after resolution of the Dispute.

4. Retention of Title

4.1 Unless otherwise specified, risk in the Goods passes to the Customer on Delivery of those Goods.

4.2 Where the Customer has requested a Special Delivery, risk in the Goods passes to the Customer upon the Goods leaving the Supplier's premises. The Supplier will not be liable for damage, shortage or loss during transit of the Goods.

4.3 Property in Goods shall remain with the Supplier until the Supplier has received the full Contract Price in cleared funds for those Goods and the Customer is bailee of the Goods until then.

4.4 Personal Property Securities Act 2009 (PPSA):

(a) this Contract is a security agreement;

(b) the interest of the Supplier in the Goods and all proceeds from the sale of the Goods by the Customer to a third party is a security interest;

(c) the Customer consents to the Supplier registering its security interest on the Personal Property Securities Register and agrees to provide all assistance reasonably required by the Supplier to facilitate registration;

(d) until such time as property in the Goods has passed to the Customer, the Customer agrees not to in any way assign, charge, lease or otherwise deal with the Goods in such a manner as to create a security interest over the Goods in favour of the Customer or any third party.



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The parties agree that this clause will not prohibit the Customer from selling the Goods in the ordinary course of business;

(e) the Customer waives its right to receive any notice under the PPSA (including notice of verification statement)

unless the notice is required by that Act and cannot be excluded;

(f) unless the Goods are used predominantly for personal, domestic or household purposes, the Supplier and the Customer agree each of the following requirements or rights under the PPSA do not apply to the enforcement of the Supplier's security interest in the Goods or of this agreement;

(i) any requirement for the Supplier to give the Customer a notice of removal of accession;

(ii) any requirement for the Supplier to give the Customer a notice of the Supplier's proposed disposal of the Goods;

(iii) any requirement for the Supplier to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;

(iv) any requirement for the Supplier to give the Customer a statement of account if the Supplier does not dispose of the Goods;

(v) any right the Customer has to redeem the Goods before the Supplier exercises a right of disposal;

(vi) any right the Customer has to reinstate this agreement before the Supplier exercises a right of disposal of the Goods;

(g) expressions defined in the PPSA have the same meaning when used in this Contract.

4.5 The Supplier may recover the Goods if they are in the Customer's possession and resell them if any payment is owed by the Customer. The Customer hereby gives its irrevocable consent to the supplier using such force as may be necessary to gain entry to the Customer's premises for the purpose of determining if the Goods are at the premises and for recovering those Goods.

5. The Customer's Obligations

5.1 The Customer must nominate one or more persons to be the Customer's authorised representative who must be present on site or readily contactable by the Supplier at all times for clarification or authorisation on any matter relevant to the supply of the Supplier's Goods and or Services.

5.2 The Customer must ensure that all preparatory works required to be done by the Customer or any third parties (as mutually agreed) are completed before the Supplier's commencement date.

5.3 The Customer must provide and maintain, at the Customer'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 required for work outside of Normal Working Hours.

5.4 The Customer must make available to the Supplier the toilet facilities and other amenities as well as electrical and telephone services existing on the site without cost to the Supplier.

6. Delivery & Access

6.1 The Customer must ensure that the Supplier has full, clear and unrestricted access for Delivery of Goods and Services and for hoisting of men and materials at all times and that any preparatory work is complete. The Contract Price and the Delivery and Practical Completion dates may be varied by the Supplier in the event of a breach of this Clause and the Customer shall be liable for extra charges, loss or expense incurred by the Supplier. Staged delivery/installation is at extra cost to the customer.



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7. Risk and Insurance

7.1 The Supplier will insure against statutory and common law liability for death of or injury to persons employed by the Supplier.

7.2 The Customer will effect and maintain, for the duration of the Contract, public liability insurance cover acceptable to the Supplier and that names the Supplier as a person to whom cover is extended in respect of any one occurrence of not less than \$10,000,000.

7.3 The Customer will effect and maintain, for the duration of the Contract, contract works insurance cover acceptable to the Supplier and that names the Supplier as a person to whom cover is extended for an amount not less than the Contract Price from date of the Contract until final completion, for the benefit of the Supplier.

7.4 The Supplier's insurance policies are for the Supplier's own benefit only and do not cover the Customer's risks.

8. Council Approval

8.1 Unless otherwise stated in the Order Schedule, the Customer is solely responsible for identifying and

8.2 obtaining any Government Authority approvals prior to commencement. The Customer holds harmless and will indemnify the Supplier for any liability arising from identifying and obtaining approvals from any government authorities such as Council or the failure to do so.

9. Rectification or Re-Usage of Existing Customer Material

9.1 The Order Schedule is submitted on the basis that any of the Customer's materials that are to be used in connection with the Services conform to relevant Government regulations, including product safety standards. The Supplier is authorised to replace any materials not so conforming or proving to be defective at the Customer's cost.

10. Variation by Customer and Extras

10.1 Any variation to the Contract must be by mutual agreement and in writing. The Supplier reserves the right to revise and amend the Contract Price if there are any variations and the Customer shall have no right to object to any such amendment to the Contract Price.

11. Specifications and Finish

11.1 All dimensions in this Contract are approximations. Actual dimensions will be as close as reasonably practicable to those specified.

11.2 Subject to clause 11.4 below, colours, anodising, materials, fabrics, glazing and the like will be the nearest commercially available to those specified in the Order Schedule.

11.3 All work will be carried out in accordance with specifications and drawings attached to the Order Schedule, but subject to deviation at the Supplier's discretion.

11.4 The Supplier reserves the right to change the materials used to take advantage of any technical developments, improvements or modifications that the Supplier considers desirable.

12. Cancellation by the Customer

12.1 Order Schedules accepted by the Customer cannot be cancelled except with the Supplier's written consent. The Customer must indemnify the Supplier against all loss and damage in relation to any part of the Order Schedule that is cancelled.



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13. Extent of the Supplier's Liability

13.1 The law implies various terms, conditions and warranties which might apply to the supply of the Goods and / or the Services. The Supplier excludes all of those terms, conditions and warranties, and any other terms, conditions and warranties which might otherwise have been implied by custom or otherwise, to the fullest extent permitted by law.

13.2 Provisions of the Competition and Consumer Act, the Australian Consumer Law and other statutes in some cases either cannot be excluded, restricted or modified, or can only be restricted or modified to a limited extent. If any such provision does apply, then to the extent permitted by law, the Supplier's liability under that provision is limited as follows:

- (a) the Supplier's liability in relation to the Goods is limited, entirely at the Supplier's option, to:
 - (1) replacement of the Goods;
 - (2) the supply of equivalent goods,
 - (3) repair of the Goods;
 - (4) payment of the cost of replacing the Goods or of acquiring equivalent goods; or
 - (5) payment of the cost of having the Goods repaired;
- (b) the Supplier's liability in relation to the Services is limited, entirely at the Supplier's option, to:
 - (1) resupplying of the Services; or
 - (2) the payment of the cost of having the Services resupplied.

13.3 If agreement cannot be reached on the costs referred to above, it is to be determined by an independent and appropriately qualified tradesman nominated by the TAS Fair Trading.

13.4 Except as stated above, the Supplier shall not be liable for, and the Customer does not rely on being able to claim against the Supplier for, any loss or damage or Consequential Damage under or in connection with this Contract or the Goods and / or the Services or anything done or omitted in that regard or for that purpose, or in relation to any representation or conduct before, under or in respect of the Order Schedule, and whether or not the possibility or potential extent of the loss or damage or Consequential Damage was known or foreseeable whether in contract or for negligence or any other tort or for breach of statutory, fiduciary or other duty (if any) and whether or not the act or conduct was authorised or required.

13.5 Except where Clause 13.2 or Clause 13.4 applies, if the Customer has not commenced legal action against the Supplier within 6 months of the date of the event that allegedly gave rise to such cause of action, the Customer irrevocably releases and forever holds the Supplier harmless from any liability arising from or in connection with that event.

14. Force Majeure Event

14.1 If the Supplier 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 the Contract will be suspended for the duration of the delay arising out of the Force Majeure Event. The Supplier must notify the Customer of a Force Majeure Event as soon as the extent to which the Supplier is unable to perform its obligations.

14.2 If a Forced Majeure Event lasts longer than 10 days the Supplier may terminate this Contract by giving written notice to the Customer.

15. Goods and Services Tax

15.1 Amounts payable by the Customer to the Supplier under this Contract are GST exclusive. From the date when the Supplier becomes liable for Goods and Services Tax (GST) in respect of a taxable supply under this Contract the Customer must pay to the Supplier an additional amount in respect of that taxable supply. This additional payment by the Customer must be made at the same time as the GST exclusive consideration for the taxable supply is payable by the Customer to the Supplier.



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The terms used in this Clause that have defined meanings in "A New Tax Systems (Goods and Services Tax) Act 1999" shall have the same meanings in this Clause.

16. General

16.1 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.

16.2 A party's failure to insist that another party perform any obligation under this Contract is not a waiver of that party's right.

16.3 This Contract is governed by Tasmanian law and each party agrees to submit to the jurisdiction of the courts in that State.

6.4 The Suppliers legal costs (on the indemnity basis) and internal costs and expenses in collecting overdue amounts from the Customer are payable by the Customer.

17. Cyber Policy

17.1 Payments to and from Construction & Project Based firms are being targeted by cybercriminals. If you intend to remit monies by Electronic Funds Transfer or otherwise deposit money to our Trust account, we invite you to call our office on 1300 789 922 to confirm bank details verbally prior to remitting any funds.

17.2 The bank account details we provide to you will not change.

17.3 We will never send an email, SMS or telephone you to advise you of a change of bank account.

17.4 We will never ask you to call an alternative telephone number, other than our main office number to verify bank account details.

17.5 Should you receive any email, SMS, telephone call or other communication requesting a change of bank account for EFT remittance, please disregard it and contact us immediately on 1300 789 922.

17.6 Should you have any questions or doubts about information on an email, we highly encourage you contact us immediately on 1300 789 922.

18. Review & Approval of Documents By the Client

18.1. The Client must, promptly (and in any event, within any time identified in the Contract for such review), review any Document(s) provided by the Designer and:

- (1) if the Document(s) comply with the requirements of the Contract, approve the Document(s);
- or
- (2) if the Document(s) do not comply with the Contract, reject the Document(s) and provide details of the non-compliance.

18.2. Notwithstanding that a Document complies with the requirements of the Design Contract, the Designer may agree with the Client to amend the Document.

19. Intellectual Property Rights

19.1. The Client acknowledges that the Designer remains the owner of all Designer's Background IP.



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19.2. The Designer acknowledges that the Client remains the owner of all Client's Background IP.

19.3. The Client acknowledges and agrees that all Developed IP is vested in the Designer and is the Designer's property as and when created, and the Client hereby assigns all rights, title and interest in and to the Developed IP to the Designer.

19.4. The Designer grants to the Client a non-exclusive, non-transferable (except to third parties for the purposes of the Project), revocable licence to use the Designer's Background IP and Developed IP for the sole purpose of the Project.

19.5. The Client must not disclose, reproduce or otherwise deal with the Developed IP or Designer's Background IP, or allow any other person to do the same, for any purpose other than the Project.

19.6. Any modifications, improvements or alterations by the Designer to the Client's Background IP are owned by and vest in the Designer, irrespective of whether the Client has or has not consented to the modifications, improvements or alterations.

19.7. The Client warrants that, unless otherwise provided in the Contract, the Client's requirements, design, materials, documents and methods of working, each specified in the Contract or provided or directed by the Client, shall not infringe any Intellectual Property Right.

19.8. The Designer warrants that any other documents and methods of working, each provided by the Designer, shall not infringe any Intellectual Property Right.

(1) Each party shall indemnify the other against such respective infringements.

20. Confidentiality

Each party shall keep all Confidential Information confidential, and shall not without the prior written consent of the other party:

20.1. make available, communicate or disclose the confidential information or any part of it to any person, firm or company other than those of its Personnel requiring the confidential information for the purpose of the Contract or for the purpose of complying with applicable laws; or

20.2. use or allow its personnel to use any confidential information for any purpose other than in relation to the provision of obligations under the Contract.

21. Liability & Consequential Loss

21.1. To the extent permitted by law, the liability of the Designer to the Client arising out of or in connection with the Contract is, to the extent permitted by law, limited in the aggregate to the amount of the Fee payable under the Contract.

21.2. Notwithstanding any other provision of the Contract, the Designer will not be liable to the Client for any loss of revenue, loss of profit or anticipated profit, loss of production, loss of use of any plant or facility, business interruption of any nature, loss of business opportunity, loss of business reputation, loss of contract, value of shares, wasted overheads, payment of liquidated sums, penalties or damages under any agreement or any other indirect, remote, consequential, punitive, exemplary or special loss or damage, but does not include damage or losses arising from claims by third parties in respect of property damage, personal injury or nervous shock.

22. Default & Termination

22.1 The Contract shall commence upon receipt by the Designer of a copy of the Contract signed by the Client and shall remain on foot until the completion of the Services or earlier termination of the Contract.



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22.2 Either party may immediately terminate the Contract by written notice to the other if a party:

- (1) becomes insolvent, files a petition in bankruptcy, makes an assignment for the benefit of its creditors; or
- (2) is in default of any of its material responsibilities or obligations under this Contract, and such default is not remedied within ten (10) days of receipt of written notice from the other party requiring it to do so.

c. If the Contract is terminated for any reason, the Designer shall be entitled to payment of:

- (1) that part of the Fee for Services performed up to and including the through the date of termination; and
- (2) the cost of any Goods ordered prior to termination which cannot be cancelled.

23. Definitions

23.1 "Contract" means this contract for the provision of Goods and or Services under the Order Schedule and is subject to these terms and conditions.

23.2 "Contract Price" means the amount specified in the Order Schedule (and any variation document) for the supply of Goods and or Services and as invoiced to the Customer.

23.3 "The Customer" means the individuals, corporations, or the directors of unincorporated entities that are contracting for the supply of the Goods and or Services, and their employees, agents, contractors, and sub- contractors.

23.4 "Dispute" means a dispute arising out of this Contract in relation completion that is in good faith and not frivolous or vexatious.

23.5 "Delivery" means the delivery of Goods to the Customer's premises, own vehicle or the nominated carrier's depot.

23.6 "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, fire, flood, drought, storm, lightning, act of God, peril of sea or air, explosion, sabotage, accident, embargo, labour dispute or shortage, riot, civil commotion, act of terrorism, act of war and war, and any other event beyond the reasonable control of the Supplier.

23.7 "Goods" means items specified in the Order Schedule.

23.8 "Non-excludable Condition" means an implied condition or warranty the exclusion of which from

23.9 a contract (including without limitation a contract with a 'consumer' as defined in the Trade Practices Act 1974) would contravene any statute or cause part or all of the relevant clause to be void.

23.10 "Normal Working Hours" is the time between 7.30am and 4.30pm Monday to Friday, excluding public holidays in Tasmania and 27 to 31 December.

23.11 "Order Schedule" means a written quotation for the supply of Goods and or Services.

23.12 "Special Delivery" means an arrangement other than for the delivery of Goods to the Customer's premises, own vehicle or the nominated carrier's depot.

23.13 "Services" means the services specified in the Order Schedule.

23.14 "The Supplier" means Bentley Workspaces Pty Ltd and its respective employees, agents, contractors and sub-contractors.

