
Jopet Holdings Pty Ltd T/A Wood Marble and White– Terms & Conditions of Trade

1. Definitions

- 1.1 “WMW” means Wood Marble and White, Jopet Holdings Pty Ltd T/A Wood Marble and White, its successors and assigns or any person acting on behalf of and with the authority of Jopet Holdings Pty Ltd T/A Wood Marble and White.
- 1.2 “Client” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by WMW to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable (plus any GST where applicable) for the Goods as agreed between WMW and the Client in accordance with clause 5 below.
- 1.5 “GST” means Goods and Services Tax (GST) as defined within the “A New Tax System (Goods and Services Tax) Act 1999”.

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 the Goods.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and WMW.
- 2.3 These terms and conditions may be meant to be read in conjunction with WMW’s Hire Form, and:
 - (a) where the context so permits, the terms ‘Goods’ or ‘Services’ shall include any supply of Equipment, as defined therein; and
 - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

3. Electronic Transactions (Queensland) Act 2001

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

- 4.1 The Client shall give WMW 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, or business practice). The Client shall be liable for any loss incurred by WMW as a result of the Client’s failure to comply with this clause.

5. Price and Payment

- 5.1 At WMW’s sole discretion, the Price shall be either:
 - (a) as indicated on any invoice provided by WMW to the Client; or
 - (b) the Price as at the date of delivery of the Goods according to WMW’s current price list; or
 - (c) WMW’s quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 WMW reserves the right to change the Price if a variation to WMW’s quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of increases to WMW in the cost of materials and labour or where additional Services are required due to the discovery of hidden or unidentifiable difficulties including, but not limited to, poor weather conditions, limitations to accessing the site, safety considerations, prerequisite work by any third party not being completed, obscured building defects, outdated electrical wiring, change of design, or hidden pipes and wiring in walls etc which are only discovered on commencement of the Services) will be charged for on the basis of WMW’s quotation, and will be detailed in writing, and shown as variations on WMW’s invoice. The Client shall be required to respond to any variation submitted by WMW within ten (10) working days. Failure to do so will entitle WMW 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.
- 5.3 At WMW’s sole discretion, a non-refundable deposit may be required.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by WMW, which may be:
 - (a) on delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with WMW’s payment schedule;
 - (c) thirty (30) 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 WMW.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and WMW.
- 5.6 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 WMW nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to WMW an amount equal to any GST WMW must pay for any supply by WMW under this or any other agreement for the sale of the Goods. 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.

6. Delivery of Goods

- 6.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that:
- (a) the Client or the Client’s nominated carrier takes possession of the Goods at WMW’s address; or
 - (b) WMW (or WMW’s nominated carrier) delivers the Goods to the Client’s nominated address even if the Client is not present at the address.
- 6.2 At WMW’s sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 6.3 WMW may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.4 Subject to clause 6.5 it is WMW’s responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.5 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that WMW claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond WMW’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 Services; or
 - (c) notify WMW that the site is ready.
- 6.6 Any time specified by WMW for delivery of the Goods is an estimate only and WMW 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 Goods to be delivered at the time and place as was arranged between both parties. In the event that WMW is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then WMW shall be entitled to charge a reasonable fee for redelivery and/or storage.

7. Risk

- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, WMW is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by WMW is sufficient evidence of WMW’s rights to receive the insurance proceeds without the need for any person dealing with WMW to make further enquiries.
- 7.3 If the Client requests WMW to leave Goods outside WMW’s premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client’s sole risk.
- 7.4 WMW shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, WMW accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 7.5 The Client acknowledges that Goods (including but not limited to paint, timber, granite, tiles & concrete) supplied may
- (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.
- 7.6 While every effort will be taken by WMW to match colour or grain of product, WMW will take no responsibility for any variation of grain of timber, granite and other natural products between sale samples and the final product.
- 7.7 Where WMW is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and WMW shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 7.8 Where the contract does not include installation of Goods by WMW, WMW shall not be liable for any defect or damage resulting from incorrect or faulty installation.
- 7.9 Where the Client has supplied materials for WMW to complete the Services, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. WMW shall not be responsible for any defects in the Services, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 7.10 Any advice, recommendation, information, assistance or service provided by WMW in relation to Goods or Services supplied is given in good faith, is based on WMW’s own knowledge and experience and shall be accepted without liability on the part of WMW and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.

8. Access

- 8.1 The Client shall ensure that WMW has clear and free access to the work site at all times to enable them to undertake the Services. WMW shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of WMW.

9. Underground Locations

- 9.1 Prior to WMW commencing any work the Client must advise WMW of the precise location of all underground services on the site and clearly mark the same. The underground mains & 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.
- 9.2 Whilst WMW will take all care to avoid damage to any underground services the Client agrees to indemnify WMW in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 9.1.

10. Compliance with Laws

- 10.1 The Client and WMW shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 10.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 10.3 The Client agrees that the site will comply with any work health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

11. Title

- 11.1 WMW and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid WMW all amounts owing to WMW; and
 - (b) the Client has met all of its other obligations to WMW.
- 11.2 Receipt by WMW of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 11.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 11.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to WMW on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for WMW and must pay to WMW the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for WMW and must pay or deliver the proceeds to WMW on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of WMW and must sell, dispose of or return the resulting product to WMW as it so directs.
 - (e) the Client irrevocably authorises WMW to enter any premises where WMW believes the Goods are kept and recover possession of the Goods.
 - (f) WMW may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of WMW.
 - (h) WMW may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

12. Personal Property Securities Act 2009 ("PPSA")

- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to WMW for Services – that have previously been supplied and that will be supplied in the future by WMW to the Client.
- 12.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which WMW may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, WMW for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of WMW;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of WMW;
 - (e) immediately advise WMW of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 12.4 WMW and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 12.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by WMW, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Client must unconditionally ratify any actions taken by WMW under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary (including those contained in this clause 12) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge

- 13.1 In consideration of WMW agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

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- 13.2 The Client indemnifies WMW from and against all WMW's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising WMW's rights under this clause.
- 13.3 The Client irrevocably appoints WMW and each director of WMW as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.
- 14. Client's Disclaimer**
- 14.1 The Client hereby disclaims any right to rescind, or cancel any contract with WMW or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by WMW and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.
- 15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 15.1 The Client must inspect the Goods on delivery and must within five (5) days of delivery notify WMW in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow WMW to inspect the Goods.
- 15.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 15.3 WMW acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, WMW makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. WMW's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Client is a consumer within the meaning of the CCA, WMW's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If WMW is required to replace the Goods under this clause or the CCA, but is unable to do so, WMW may refund any money the Client has paid for the Goods.
- 15.7 If the Client is not a consumer within the meaning of the CCA, WMW's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by WMW at WMW's sole discretion;
 - (b) limited to any warranty to which WMW is entitled, if WMW did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 15.8 Subject to this clause 15, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 15.1; and
 - (b) WMW has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 15.9 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, WMW shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by WMW;
 - (e) fair wear and tear, any accident, or act of God.
- 15.10 Notwithstanding anything contained in this clause if WMW is required by a law to accept a return then WMW will only accept a return on the conditions imposed by that law.
- 16. Intellectual Property**
- 16.1 Where WMW has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of WMW.
- 16.2 The Client warrants that all designs, specifications or instructions given to WMW will not cause WMW to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify WMW against any action taken by a third party against WMW in respect of any such infringement.
- 16.3 The Client agrees that WMW may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which WMW has created for the Client.
- 17. Default and Consequences of Default**
- 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at WMW's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes WMW any money the Client shall indemnify WMW from and against all costs and disbursements incurred by WMW in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, WMW's contract default fee, and bank dishonour fees).
- 17.3 Further to any other rights or remedies WMW may have under this contract, if a Client has made payment to WMW, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by WMW under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 17.4 Without prejudice to WMW's other remedies at law WMW shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to WMW shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to WMW becomes overdue, or in WMW's opinion the Client will be unable to make a payment when it falls due;

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- (b) the Client has exceeded any applicable credit limit provided by WMW;
- (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

18. Cancellation

- 18.1 Without prejudice to any other remedies WMW may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions WMW may suspend or terminate the supply of Goods to the Client. WMW will not be liable to the Client for any loss or damage the Client suffers because WMW has exercised its rights under this clause.
- 18.2 WMW may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice WMW shall repay to the Client any money paid by the Client for the Goods. WMW shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by WMW as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

19. Dispute Resolution

- 19.1 If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
 - (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

20. Privacy Act 1988

- 20.1 The Client agrees for WMW to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by WMW.
- 20.2 The Client agrees that WMW may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
 - (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 20.3 The Client consents to WMW being given a consumer credit report to collect overdue payment on commercial credit.
- 20.4 The Client agrees that personal credit information provided may be used and retained by WMW for the following purposes (and for other agreed purposes or required by):
 - (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 20.5 WMW may give information about the Client to a CRB for the following purposes:
 - (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 20.6 The information given to the CRB may include:
 - (a) personal information as outlined in 20.1 above;
 - (b) name of the credit provider and that WMW is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and WMW has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of WMW, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 20.7 The Client shall have the right to request (by e-mail) from WMW:
 - (a) a copy of the information about the Client retained by WMW and the right to request that WMW correct any incorrect information; and
 - (b) that WMW does not disclose any personal information about the Client for the purpose of direct marketing.
- 20.8 WMW will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 20.9 The Client can make a privacy complaint by contacting WMW via e-mail. WMW will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the

event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

21. Service of Notices

- 21.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 21.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

22. Building and Construction Industry Payments Act 2004

- 22.1 At WMW's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Payments Act 2004 may apply.
- 22.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.

23. Building and Construction Industry Security of Payments Act 1999

- 23.1 At WMW's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 23.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

24. General

- 24.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which WMW has its principal place of business, and are subject to the jurisdiction of the Southport courts in that state.
- 24.3 Subject to clause 15 WMW shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by WMW of these terms and conditions (alternatively WMW's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 24.4 Neither party shall assign or sub-contract all or any part of their rights and obligations under this agreement without the written consent of the other party.
- 24.5 The Client agrees that WMW may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for WMW to provide Goods to the Client.
- 24.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 24.7 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.