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Definitions</p> <p>1.1 "FRC Group" shall mean FRC Group Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of FRC Group Pty Ltd.</p> <p>1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by FRC Group to the Customer.</p> <p>1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.</p> <p>1.4 "Goods" shall mean Goods supplied by FRC Group to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by FRC Group to the Customer.</p> <p>1.5 "Services" shall mean all Services supplied by FRC Group to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).</p> <p>1.6 "Price" shall mean the price payable for the Goods as agreed between FRC Group and the Customer in accordance with clause 4 of this contract.</p> <p>2. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")</p> <p>2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.</p> <p>3. Acceptance</p> <p>3.1 Any instructions received by FRC Group from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by FRC Group shall constitute acceptance of the terms and conditions contained herein.</p> <p>3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.</p> <p>3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of FRC Group.</p> <p>3.4 The Customer shall give FRC Group not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by FRC Group as a result of the Customer's failure to comply with this clause.</p> <p>3.5 Goods are supplied by FRC Group only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.</p> <p>4. Price And Payment</p> <p>4.1 At FRC Group's sole discretion the Price shall be either:</p> <p>(a) as indicated on invoices provided by FRC Group to the Customer in respect of Goods supplied; or</p> <p>(b) FRC Group's quoted Price (subject to clause 4.2) which shall be binding upon FRC Group provided that the Customer shall accept FRC Group's quotation in writing within thirty (30) days.</p> <p>4.2 FRC Group reserves the right to change the Price in the event of a variation to FRC Group's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of increases to FRC Group in the cost of materials and labour) will be charged for on the basis of FRC Group's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.</p> <p>4.3 At FRC Group's sole discretion:</p> <p>(a) payment shall be due on delivery of the Goods; or</p> <p>(b) payment for approved Customers shall be due fourteen (14) days following the date of the invoice; or</p> <p>(c) payment for other Customers shall be due thirty (30) days following the date of the invoice.</p> <p>4.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.</p> <p>4.5 Payment will be made by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and FRC Group.</p> <p>4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.</p> <p>5. Delivery Of Goods</p> <p>5.1 At FRC Group's sole discretion delivery of the Goods shall take place when the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by FRC Group or FRC Group's nominated carrier).</p> <p>5.2 At FRC Group's sole discretion the costs of delivery are included in the Price.</p> <p>5.3 The failure of FRC Group to deliver shall not entitle either party to treat this contract as repudiated.</p> <p>5.4 FRC Group shall not be liable for any loss or damage whatsoever due to failure by FRC Group to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of FRC Group.</p> <p>6. Risk</p> <p>6.1 If FRC Group retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.</p> <p>6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, FRC Group is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by FRC Group is sufficient evidence of FRC Group's rights to receive the insurance proceeds without the need for any person dealing with FRC Group to make further enquiries.</p> <p>6.3 Where the Customer expressly requests FRC Group to leave Goods outside FRC Group's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.</p> <p>6.4 Where the Customer has supplied materials for FRC Group to complete the works, the Customer acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. FRC Group shall not be responsible for any defects in the works, any loss or damage to the materials (or any part thereof), however arising from the use of materials supplied by the Customer.</p> <p>6.5 The Customer acknowledges that variations of colour and texture are inherent in concrete. FRC Group shall not be liable for any loss, damages or costs however arising resulting from any variation of the colour or texture between different batches of product.</p> <p>6.6 Detailed drawings of any services that will be embedded in the concrete are to be provided to FRC Group prior to commencement of the works. Whilst all due care will be taken no liability will be accepted by FRC Group for damage to the services or any other element embedded in the concrete.</p> <p>6.7 The Customer acknowledges that the curing time for concrete can be affected by elements such as temperature or the weather, as such FRC Group offers no guarantee as to the length of time the curing process will take.</p> <p>6.8 FRC Group offers no guarantee against cracking of concrete.</p> <p>6.9 Where FRC Group gives advice or recommendations to the Customer, or the Customer's agent, regarding the suitability of the worksite for the laying of concrete slabs, foundations or similar works and such advice or recommendations are not acted upon then FRC Group shall require the Customer or their agent to authorise commencement of the works in writing. FRC Group shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the works.</p> <p>7. Access</p> <p>7.1 The Customer shall ensure that FRC Group has clear and free access to the work site at all times to enable them to undertake the works. FRC Group 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 FRC Group.</p> <p>8. Underground Locations</p> <p>8.1 Prior to FRC Group commencing any work the Customer must advise FRC Group of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer 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.</p> <p>8.2 Whilst FRC Group will take all care to avoid damage to any underground services the Customer agrees to indemnify FRC Group 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 8.1.</p> <p>9. Title</p> <p>9.1 FRC Group and the Customer agree that ownership of the Goods shall not pass until:</p> <p>(a) the Customer has paid FRC Group all amounts owing for the particular Goods; and</p> <p>(b) the Customer has met all other obligations due by the Customer to FRC Group in respect of all contracts between FRC Group and the Customer.</p> <p>9.2 Receipt by FRC Group 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 and until then FRC Group's ownership or rights in respect of the Goods shall continue.</p> <p>9.3 It is further agreed that:</p> <p>(a) where practicable the Goods shall be kept separate and identifiable until FRC Group shall have received payment and all other obligations of the Customer are met; and</p> <p>(b) until such time as ownership of the Goods shall pass from FRC Group to the Customer FRC Group may give notice in writing to the Customer to return the Goods or any of them to FRC Group. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and FRC Group shall have the right of stopping the Goods in transit whether or not delivery has been made; and</p> <p>(c) if the Customer fails to return the Goods to FRC Group then FRC Group or FRC Group's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and</p> <p>(d) the Customer is only a bailee of the Goods and until such time as FRC Group has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to FRC Group for the Goods, on trust for FRC Group; and</p> <p>(e) the Customer shall not deal with the money of FRC Group in any way which may be adverse to FRC Group; and</p> <p>(f) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of FRC Group; and</p> <p>(g) FRC Group can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and</p> <p>(h) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that FRC Group will be the owner of the end products.</p> <p>10. Defects</p> <p>10.1 The Customer shall inspect the Goods on delivery and shall within three (3) days of delivery (time being of the essence) notify FRC Group of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford FRC Group an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer</p> | <p>shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which FRC Group has agreed in writing that the Customer is entitled to reject, FRC Group's liability is limited to either (at FRC Group's discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.</p> <p>Goods will not be accepted for return other than in accordance with 10.1 above.</p> <p>11. Warranty</p> <p>To the extent permitted by statute, no warranty is given by FRC Group as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. FRC Group shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.</p> <p>12. Default & Consequences of Default</p> <p>12.1 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 one half percent (2.5%) per calendar month (and at FRC Group's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>12.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by FRC Group.</p> <p>12.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify FRC Group from and against all costs and disbursements incurred by FRC Group in pursuing the debt including legal costs on a solicitor and own client basis and FRC Group's collection agency costs.</p> <p>12.4 Without prejudice to any other remedies FRC Group may have, if at any time the Customer is in breach of any obligation (including those relating to payment), FRC Group may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. FRC Group will not be liable to the Customer for any loss or damage the Customer suffers because FRC Group has exercised its rights under this clause.</p> <p>12.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.</p> <p>12.6 Without prejudice to FRC Group's other remedies at law FRC Group shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to FRC Group shall, whether or not due for payment, become immediately payable in the event that:</p> <p>(a) any money payable to FRC Group becomes overdue, or in FRC Group's opinion the Customer will be unable to meet its payments as they fall due; or</p> <p>(b) the Customer 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</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p> <p>13. Security And Charge</p> <p>13.1 Despite anything to the contrary contained herein or any other rights which FRC Group may have howsoever:</p> <p>(a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to FRC Group or FRC Group's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that FRC Group (or FRC Group's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.</p> <p>(b) should FRC Group elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify FRC Group from and against all FRC Group's costs and disbursements including legal costs on a solicitor and own client basis.</p> <p>(c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint FRC Group or FRC Group's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.</p> <p>14. Dispute Resolution</p> <p>14.1 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:</p> <p>(a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and</p> <p>(b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.</p> <p>15. Compliance with Laws</p> <p>15.1 The Customer and FRC Group shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.</p> <p>15.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the works.</p> <p>15.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.</p> <p>16. Cancellation</p> <p>16.1 FRC Group 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 Customer. On giving such notice FRC Group shall repay to the Customer any sums paid in respect of the Price. FRC Group shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>16.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by FRC Group (including, but not limited to, any loss of profits) up to the time of cancellation.</p> <p>16.3 Cancellation of orders for Goods made to the Customer's specifications or non-stocklist items will definitely not be accepted, once production has commenced.</p> <p>17. Privacy Act 1988</p> <p>17.1 The Customer and/or the Guarantor/s agree for FRC Group to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by FRC Group.</p> <p>17.2 The Customer and/or the Guarantor/s agree that FRC Group may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:</p> <p>(a) to assess an application by Customer; and/or</p> <p>(b) to notify other credit providers of a default by the Customer; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or</p> <p>(d) to assess the credit worthiness of Customer and/or Guarantor/s.</p> <p>17.3 The Customer consents to FRC Group being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).</p> <p>17.4 The Customer agrees that personal credit information provided may be used and retained by FRC Group for the following purposes and for other purposes as shall be agreed between the Customer and FRC Group or required by law from time to time:</p> <p>(a) provision of Goods; and/or</p> <p>(b) marketing of Goods by FRC Group, its agents or distributors in relation to the Goods; and/or</p> <p>(c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods; and/or</p> <p>(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or</p> <p>(e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.</p> <p>17.5 FRC Group may give information about the Customer to a credit reporting agency for the following purposes:</p> <p>(a) to obtain a consumer credit report about the Customer; and/or</p> <p>(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.</p> <p>18. Construction Contracts Act 2004</p> <p>18.1 At FRC Group's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Construction Contracts Act 2004 may apply.</p> <p>18.2 Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Acts where applicable.</p> <p>19. General</p> <p>19.1 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.</p> <p>19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Western Australia.</p> <p>19.3 FRC Group shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by FRC Group of these terms and conditions.</p> <p>19.4 In the event of any breach of this contract by FRC Group the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.</p> <p>19.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by FRC Group nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>19.6 FRC Group may license or sub-contract all or any part of its rights and obligations without the Customer's consent.</p> <p>19.7 The Customer agrees that FRC Group may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which FRC Group notifies the Customer of such change.</p> <p>19.8 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.</p> <p>19.9 The failure by FRC Group to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect FRC Group's right to subsequently enforce that provision.</p> |
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