

B & B Fabrication – Terms & Conditions of Trade

1.	Definitions	(a) on delivery of the Goods;	
1.1	"B&B FAB" means B & B Fabrication Pty Ltd ATF J & B Brewer Family Trust T/A B & B Fabrication, its successors and assigns or any person acting on behalf of and with the authority of B & B Fabrication Pty Ltd ATF J & B Brewer Family Trust T/A B & B Fabrication.	(b) on completion of the Services;	
1.2	"Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting B&B FAB to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:	(c) by way of instalments/progress payments in accordance with B&B FAB's payment schedule;	10.2
(a)	if there is more than one Client, is a reference to each Client jointly and severally; and	(d) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;	10.3
(b)	if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and	(e) the date specified on any invoice or other form as being the date for payment; or	
(c)	includes the Client's executors, administrators, successors and permitted assigns.	(f) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by B&B FAB.	11.1
1.3	"Goods" means all Goods or Services supplied by B&B FAB 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).	Payment may be made by cash, cheque, bank cheque, electronic/online banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and B&B FAB.	11.2
1.4	"Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.	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 B&B FAB nor to withhold payment of any invoice because part of that invoice is in dispute.	11.3
1.5	"Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.	Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to B&B FAB an amount equal to any GST B&B FAB must pay for any supply by B&B FAB 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.	
1.6	"Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between B&B FAB and the Client in accordance with clause 5 below.	Delivery of Goods Delivery ("Delivery") of the Goods is taken to occur at the time that:	
1.7	"GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).	(a) the Client or the Client's nominated carrier takes possession of the Goods at B&B FAB's address; or	
2.	Acceptance	(b) B&B FAB (or B&B FAB's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.	
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.	At B&B FAB's sole discretion the cost of delivery is included in the Price.	
2.2	In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.	B&B FAB 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.	
2.3	Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.	Any time specified by B&B FAB for delivery of the Goods is an estimate only and B&B FAB 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 B&B FAB is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then B&B FAB shall be entitled to charge a reasonable fee for redelivery and/or storage.	12.1
2.4	The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with B&B FAB and it has been approved with a credit limit established for the account.	Risk 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. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, B&B FAB is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by B&B FAB is sufficient evidence of B&B FAB's rights to receive the insurance proceeds without the need for any person dealing with B&B FAB to make further enquiries.	12.2
2.5	In the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, B&B FAB reserves the right to refuse Delivery.	If the Client requests B&B FAB to leave Goods outside B&B FAB'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. B&B FAB 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, B&B FAB accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.	12.3
2.6	Goods are supplied by B&B FAB only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.	Where the Client is to supply B&B FAB with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. B&B FAB shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Client.	
2.7	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.	The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and are of suitable capacity to handle the Goods once installed.	
3.	Errors and Omissions	The Client acknowledges that Goods supplied may exhibit variations in shade tone, colour, texture, surface and finish, and may fade or change colour over time. B&B FAB will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur. The Client acknowledges that where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims used due to the difference in aluminium or other alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Goods.	
3.1	The Client acknowledges and accepts that B&B FAB shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):	The Client acknowledges that Goods supplied may:	
(a)	resulting from an inadvertent mistake made by B&B FAB in the formation and/or administration of this contract; and/or	(a) fade or change colour over time; and	
(b)	contained in/omitted from any literature (hard copy and/or electronic) supplied by B&B FAB in respect of the Services.	(b) expand, contract or distort as a result of exposure to heat, cold, weather; and	
3.2	In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of B&B FAB; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.	(c) mark or stain if exposed to certain substances; and	
4.	Change in Control	(d) be damaged or disfigured by impact or scratching.	
4.1	The Client shall give B&B FAB 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 numbers, or business practice). The Client shall be liable for any loss incurred by B&B FAB as a result of the Client's failure to comply with this clause.	Specifications The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in B&B FAB's or supplier's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by B&B FAB.	
5.	Price and Payment	Access The Client shall ensure that B&B FAB has clear and free access to the work site at all times to enable them to deliver the Goods. B&B FAB shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of B&B FAB.	
5.1	At B&B FAB's sole discretion the Price shall be either:	It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks. The Client agrees to indemnify B&B FAB against all costs incurred by B&B FAB in recovering such vehicles in the event they become bogged or otherwise immovable.	
(a)	as indicated on any invoice provided by B&B FAB to the Client; or	Compliance with Laws The Client and B&B FAB shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities and/or Australian Standards that may be applicable to the Services.	
(b)	B&B FAB'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.	The Client shall obtain (at the expense of the Client) all licenses, approvals and certifications that may be required for the Services or upon completion of the Services.	
5.2	B&B FAB reserves the right to change the Price if a variation to B&B FAB's quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such as availability of raw materials, change of design or scope, fluctuations in metal prices, state of item to be modified, degree of complexity of the work, obscured defects found on closer inspection, or as a result of any increase to B&B FAB in the cost of materials and labour) will be charged for on the basis of B&B FAB's quotation and will be shown as variations on B&B FAB's invoice. The Client shall be required to respond to any variation submitted by B&B FAB within ten (10) working days. Failure to do so will entitle B&B FAB 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.	The Client agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.	
5.3	At B&B FAB's sole discretion a non-refundable deposit may be required.	Title B&B FAB and the Client agree that ownership of the Goods shall not pass until:	
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 B&B FAB, which may be:	(a) the Client has paid B&B FAB all amounts owing to B&B FAB; and	
		(b) the Client has met all of its other obligations to B&B FAB.	
		Receipt by B&B FAB 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.	
		It is further agreed that:	
		(a) until ownership of the Goods passes to the Client in accordance with clause 11.1 that the Client is only a bailee of the Goods and must return the Goods to B&B FAB on request.	
		(b) the Client holds the benefit of the Client's insurance of the Goods on trust for B&B FAB and must pay to B&B FAB 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 B&B FAB and must pay or deliver the proceeds to B&B FAB 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 B&B FAB and must sell, dispose of or return the resulting product to B&B FAB as it so directs.	
		(e) the Client irrevocably authorises B&B FAB to enter any premises where B&B FAB believes the Goods are kept and recover possession of the Goods.	
		(f) B&B FAB 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 B&B FAB.	
		(h) B&B FAB may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.	
		Personal Property Securities Act 2009 ("PPSA") In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.	
		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 B&B FAB for Services – that have previously been supplied and that will be supplied in the future by B&B FAB to the Client.	
		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 B&B FAB 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, B&B FAB 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 B&B FAB;	
		(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 B&B FAB;	
		(e) immediately advise B&B FAB 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.	
		B&B FAB 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.	
		The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.	
		The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.	
		Unless otherwise agreed to in writing by B&B FAB, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.	
		The Client must unconditionally ratify any actions taken by B&B FAB under clauses 12.3 to 12.5.	
		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.	
		Security and Charge In consideration of B&B FAB 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).	
		The Client indemnifies B&B FAB from and against all B&B FAB's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising B&B FAB's rights under this clause.	
		The Client irrevocably appoints B&B FAB and each director of B&B FAB 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.	

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<p>14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA) 14.1 The Client must inspect the Goods on delivery (and Services on completion) and must within forty-eight (48) hours of delivery notify B&B FAB 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 B&B FAB to inspect the Goods. 14.2 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). 14.3 B&B FAB acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees. 14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, B&B FAB makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. B&B FAB's liability in respect of these warranties is limited to the fullest extent permitted by law. 14.5 If the Client is a consumer within the meaning of the CCA, B&B FAB's liability is limited to the extent permitted by section 64A of Schedule 2. 14.6 If B&B FAB is required to replace the Goods under this clause or the CCA, but is unable to do so, B&B FAB may refund any money the Client has paid for the Goods. 14.7 If the Client is not a consumer within the meaning of the CCA, B&B FAB'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 B&B FAB at B&B FAB's sole discretion; (b) limited to any warranty to which B&B FAB is entitled, if B&B FAB did not manufacture the Goods; (c) otherwise negated absolutely. 14.8 Subject to this clause 14, returns will only be accepted provided that: (a) the Client has complied with the provisions of clause 14.1; and (b) B&B FAB 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. 14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, B&B FAB 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 B&B FAB; (e) fair wear and tear, any accident, or act of God. 14.10 In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by B&B FAB as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that B&B FAB has agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 14.10. 14.11 Notwithstanding anything contained in this clause if B&B FAB is required by a law to accept a return then B&B FAB will only accept a return on the conditions imposed by that law.</p>	<p>17. Cancellation 17.1 Without prejudice to any other remedies B&B FAB may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions B&B FAB may suspend or terminate the supply of Goods to the Client. B&B FAB will not be liable to the Client for any loss or damage the Client suffers because B&B FAB has exercised its rights under this clause. 17.2 B&B FAB 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 B&B FAB shall repay to the Client any money paid by the Client for the Goods. B&B FAB shall not be liable for any loss or damage whatsoever arising from such cancellation. 17.3 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 B&B FAB as a direct result of the cancellation (including, but not limited to, any loss of profits). 17.4 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.</p> <p>18. Privacy Policy 18.1 All emails, documents, images or other recorded information held or used by B&B FAB is Personal Information, as defined and referred to in clause 18.3, and therefore considered Confidential Information. B&B FAB acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). B&B FAB acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by B&B FAB that may result in serious harm to the Client, B&B FAB will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law. 18.2 Notwithstanding clause 18.1, privacy limitations will extend to B&B FAB in respect of Cookies where transactions for purchases/orders transpire directly from B&B FAB's website. B&B FAB agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's: (a) IP address, browser, email client type and other similar details; (b) tracking website usage and traffic; and (c) reports are available to B&B FAB when B&B FAB sends an email to the Client, so B&B FAB may collect and review that information ("collectively Personal Information") In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via B&B FAB's website. The Client agrees for B&B FAB to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by B&B FAB. The Client agrees that B&B FAB 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 (2) years. 18.3 The Client consents to B&B FAB being given a consumer credit report to collect overdue payment on commercial credit. The Client agrees that personal credit information provided may be used and retained by B&B FAB 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. B&B FAB 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. The information given to the CRB may include: (a) Personal Information as outlined in 18.3 above; (b) name of the credit provider and that B&B FAB 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 B&B FAB has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments); (g) information that, in the opinion of B&B FAB, 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). The Client shall have the right to request (by e-mail) from B&B FAB: (a) a copy of the Personal Information about the Client retained by B&B FAB and the right to request that B&B FAB correct any incorrect Personal Information; and (b) that B&B FAB does not disclose any Personal Information about the Client for the purpose of direct marketing.</p>	<p>18.10 B&B FAB 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 Contract or is required to be maintained and/or stored in accordance with the law. 18.11 The Client can make a privacy complaint by contacting B&B FAB via e-mail. B&B FAB 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.</p> <p>19. Building and Construction Industry Payments Act 2004 19.1 At B&B FAB'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. 19.2 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.</p> <p>20. Service of Notices 20.1 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. 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.</p> <p>21. Trusts If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not B&B FAB may have notice of the Trust, the Client covenants with B&B FAB as follows: (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund; (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity. (c) the Client will not without consent in writing of B&B FAB (B&B FAB will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events; (i) the removal, replacement or retirement of the Client as trustee of the Trust; (ii) any alteration to or variation of the terms of the Trust; (iii) any advancement or distribution of capital of the Trust; or (iv) any resettlement of the trust property.</p> <p>General 22.1 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. These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland in which B&B FAB has its principal place of business, and are subject to the jurisdiction of the courts of Dalby in Queensland. 22.2 Subject to clause 14, B&B FAB 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 B&B FAB of these terms and conditions (alternatively B&B FAB's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods). B&B FAB may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent. The Client cannot licence or assign without the written approval of B&B FAB. B&B FAB may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of B&B FAB's subcontractors without the authority of B&B FAB. The Client agrees that B&B FAB may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to 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 B&B FAB to provide Goods to the Client. 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. Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.</p>
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