

## 1 Definitions

- 1.1 "Company" shall mean GESA Pty Ltd ATF The Nau Family Trust T/A GESA Pty. Ltd.
- 1.2 "Client" shall mean the Client or any person acting on behalf of and with the written authority of the Client.
- 1.3 "Work" shall mean all Works (including the supply of Materials) undertaken by the Company and described in this contract and includes any advice or recommendations.
- 1.4 "Materials" shall mean Materials required to complete the Works.
- 1.5 "Prime Cost Item" shall mean an item that either has not been selected, or whose Price is not known, at the time this contract is entered into and for the cost of supply and delivery of which the Company must make a reasonable allowance in the contract.
- 1.6 "Provisional Sum" shall mean an estimate of the cost of carrying out particular Works under this contract for which the Company, after making all reasonable inquiries, cannot give a definite Price at the time this contract is entered into.
- 1.7 "Price" shall mean the Price of the Works as agreed between the Company and the Client.

## 2 Acceptance

- 2.1 Any instructions received by the Company from the Client for the supply of Works and/or the Client's acceptance of Works undertaken by the Company shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Client shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client, the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the Company.
- 2.4 All requested quotes must be signed and accepted in writing. None of the Company's agents or representatives are authorized to make any representations, statements, conditions, or agreements not expressed by the manager of the Company in writing nor is the Company bound by any such unauthorized statements.

## 3 Variations

- 3.1 Whilst all care is taken in supplying accurate quotes, unidentified challenges requiring additional work will be identified and quoted prior to the commencement of work. All variations, including any additional work requested outside of the original quote, will be subject to an additional quote and written approval process.
- 3.2 **In the event** the Client requests a variation, all such requests shall be made in writing.
- 3.3 **In the event** the Company requests a variation, the Company will, in writing:
  - a) State the reason for the variation.
  - b) Provide a description of the variation.
  - c) State any effect the variation will have on the contract, including but not limited to, the Price, completion date, and whether further permits or authorizations are required.

Other than for the events outlined in clause 3.4 and 3.5, the Company shall obtain written acceptance by the Client of any variation submitted by the Company before commencing Work on the variation.

### 3.4 In the event of:

- a) Unforeseeable problems with the site, which are only revealed when undertaking the works, which the Company considers, should be rectified for the safe completion of the Works.
- b) The Company being instructed to undertake extra Works by any person authorized by the state or federal government: then the Company may carry out any Works needed to fix any such problem/s or carry out any such instructions. Any such additional Works necessary are to be treated as a variation. However, if a price is not agreed upon, then the Client will be charged at the Company's actual cost-plus twenty percent (20%) for the Works.

- 3.5 The Company may, by giving notice to the Client at any time up to seven (7) days before delivery, increase the price of the materials to reflect any increase in the cost to the Client beyond the reasonable control of the Company (including, without limitation, foreign exchange fluctuations, taxes and duties, provisions of any Acts, By-Law, Order or Regulation of any parliament, municipality, or local authority enacted after the date of the contract between the Client and Company, and the cost of labour, materials, and other manufacturing costs).

## 4 Price and Payment

- 4.1 The price is payable in full without any deduction when the Goods or Services are supplied unless otherwise agreed in writing by GESA Pty Ltd. Time of payment of the Price is of the essence. Payment is strictly by completion unless prior arrangements are made. We reserve the right to charge penalties on late payments.
- 4.2 The title of goods remains the property of GESA PTY LTD until payment has been made in full. The responsibility for goods supplied is handed over at the time of delivery ABN 17 287 095 583 ACN 121 537 433.
- 4.3 Payment can be made by cash, by direct credit, or bank transfer.
- 4.4 Credit Card payments attract an additional fee, which will be added to any transaction using a credit card. GESA PTY LTD currently accepts MasterCard and VISA only.
- 4.5 The Price shall be increased by the amount of any GST and other taxes and duties, which may be applicable, except to the extent that such taxes are expressly included in the building contract schedule.
- 4.6 Client may be charged interest on any overdue amounts at the rate of 5% per annum above the then-current cash rate target of the Reserve Bank of Australia, calculated daily from the day the payment became due until the day of full and final payment.
- 4.7 Client agrees to pay GESA PTY LTD any expenses (including legal costs) incurred in collecting any outstanding debts due by the client to GESA PTY LTD.
- 4.8 Payment must be made on completion. Part payments apply for jobs that require multiple attendances and will be outlined at the time of quoting.

## 5 Delivery of Works

- 5.1 Subject to clause 5.2, it is the Company's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 5.2 The Works commencement date will be put back, and the building period extended by whatever time is reasonable in the event that the Company claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Company's control, including but not limited to any failure by the Client to: (a) make a selection or (b) have the site ready for installation or (c) notify the Company that the site is ready.
- 5.3 The Works shall be deemed to be completed when the Works carried out under this contract have been completed in accordance with the plans and specifications set out in this contract.
- 5.4 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- 5.5 The Company shall not be liable for any loss or damage whatsoever due to the failure by the Company to deliver the Works (or any of them) promptly or at all.

## **6 Client's Responsibility**

- 6.1 It is the intention of the Company and agreed by the Client that:
- a) Any building/construction sites will comply with all South Australian occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
  - b) The Company is not responsible for the removal of rubbish from or clean-up of the building/construction site/s. This is the responsibility of the Client or the Client's agent.

## **7 Risk**

If the Company retains ownership of the Materials nonetheless, all risk for the Materials passes to the Client on delivery.

## **8 Surplus Materials**

Unless otherwise stated elsewhere in this contract:

- a) Only suitable new Materials will be used.
- b) Demolished Materials remain the Client's property.
- c) Materials which the Company brings to the site which are surplus remain the property of the Company.

## **9 Title**

- 9.1 It is the intention of the Company and agreed by the Client that ownership of Materials shall not pass until:
- The Client has paid all amounts owing for the particular Materials and
  - The Client has met all other obligations due by the Client to the Company in respect of all contracts between the Company and the Client.
- 9.2 Receipt by the Company 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 recognized, and until then the Company's ownership or rights in respect of Materials shall continue.
- 9.3 It is further agreed that:
- Where practicable, the Materials shall be kept separate and identifiable until the Company shall have received payment, and all other obligations of the Client are met.
  - Until such time as ownership of the Materials shall pass from the Company to the Client, the Company may give notice in writing to the Client to return the Materials or any of them to the Company. Upon such notice, the rights of the Client to obtain ownership or any other interest in the Materials shall cease.
  - The Company shall have the right of stopping the Materials in transit, whether or not delivery has been made.
  - If the Client fails to return the Materials to the Company, then the Company or the Company's agent may enter upon and into land and premises owned, occupied, or used by the Client or any premises as the invitee of the Client, where the Materials are situated and take possession of the Materials.

## **10 Defects**

- 10.1 The Client shall inspect the Works on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Company of any alleged defect, shortage in quantity, damage, or failure to comply with the description or quote. The Client shall afford the Company an opportunity to inspect the Works within a reasonable time following delivery if the Client believes the Works are defective in any way. If the Client shall fail to comply with these provisions, the Works shall be presumed to be free from any defect or damage. For defective Works, which the Company has agreed in writing that the Client is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Works or repairing the Works.

## **11 Returns**

- 11.1 The Company may (in its discretion) accept the return of Materials for credit, but this may incur a handling fee of ten percent (10%) of the value of the returned Materials plus any freight.

## **12 Warranty**

- 12.1 To the extent required by statute, subject to the conditions of warranty set out in clause 13.2, the Company warrants that if any defect in any workmanship of the Company becomes apparent and is reported to the Company within twelve (12) months of the date of delivery (time being of the essence), then the Company will either (at the Company's sole discretion) replace or remedy the workmanship.

12.2 The conditions applicable to the warranty given by clause 13.1 are:

- a)** The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through: (i) Failure on the part of the Client to properly maintain any Works or (ii) Failure on the part of the Client to follow any instructions or guidelines provided by the Company or (iii) Any use of any Works otherwise than for any application specified on a quote or order form or (iv) The continued use of any Works after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user or (v) Fair wear and tear, any accident, or act of God.
- b)** The warranty shall cease, and the Company shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered, or overhauled without the Company's consent.
- c)** In respect of all claims, the Company shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- d)** For Material not manufactured by the Company, the warranty shall be the current warranty provided by the manufacturer of the Material. The Company shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.

### **13 The Commonwealth Trade Practices Act 1974, Building Act 1993, and Fair-Trading Acts**

Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974, Building Act 1993, or the Fair-Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

## **14 Intellectual Property**

- 14.1 Where GESA has designed, drawn, or written plans or a schedule of Works for the Client, then the copyright in those plans, schedules, designs, and drawings shall remain vested in the GESA and shall only be used by the Client at the GESA's discretion.
- 14.2 The Client warrants that all designs or instructions to GESA will not cause GESA to infringe any patent, registered design, or trademark in the execution of the Client's order.

## **15 Default & Consequences of Default**

- 15.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month, and such interest shall compound monthly at such a rate after as well as before any judgment.
- 15.2 If GESA defaults in payment of any invoice when due, the Client shall indemnify GESA from and against all costs and disbursements incurred by GESA in pursuing the debt, including legal costs on a solicitor and own client basis and GESA's collection agency costs.
- 15.3 Without prejudice to any other remedies GESA may have, if at any time the Client is in breach of any obligation (including those relating to payment), GESA may suspend or terminate the supply of Works to the Client under the Building and Construction Industry Security of Payments Act 2002. GESA will not be liable to the Client for any loss or damage the Client suffers because GESA exercised its rights under this clause.
- 15.4 If any account remains overdue after thirty (30) days, then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees, which sum shall become immediately due and payable.
- 15.5 Without prejudice to GESA's other remedies at law GESA shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to GESA shall, whether or not due for payment, become immediately payable in the event that: a) Any money payable to GESA becomes overdue, or in GESA's opinion, the Client will be unable to meet its payments as they fall due; or b) 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 c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## **16 Privacy Act 1988**

- 16.1 The Client agrees for the GESA to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the GESA.
- 16.2 The Client agrees that the GESA may exchange information about the Client with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency 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.
- 16.3 The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history, or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 16.4 The Client consents to the GESA being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

## 17 General

- 17.1 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.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia and are subject to the jurisdiction of the courts of South Australia.
- 17.3 The Company 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 the Company of these terms and conditions.
- 17.4 In the event of any breach of this contract by the Company, the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Company exceed the Price of the Works.
- 17.5 The Client shall not set off against the Price amounts due from the Company.
- 17.6 The Company may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 17.7 The Company reserves the right to 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 the Company notifies the Client of such change.
- 17.8 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.