

1. Definitions

- 1.1 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **“Balmoral”** means REM Electrical Works Pty Ltd T/A Balmoral Air Conditioning, its successors and assigns or any person acting on behalf of and with the authority of REM Electrical Works Pty Ltd T/A Balmoral Air Conditioning.
- 1.3 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Balmoral to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.4 **“Works”** means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by Balmoral to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.5 **“Worksite”** means the address nominated by the Customer to which the Materials are to be supplied by Balmoral.
- 1.6 **“Intended Use”** means a building product and the use thereof, for which the building product is intended to be, or is reasonably likely to be, associated with a building.
- 1.7 **“Non-Conforming Building Product”** means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
(a) the product is not, or will not be, safe; or
(b) does not, or will not, comply with the relevant regulatory provisions; or
(c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.8 **“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.
- 1.9 **“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 Customer does not wish to allow Cookies to operate in the background when using Balmoral’s website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.10 **“Price”** means the Price payable (plus any GST where applicable) for the Works as agreed between Balmoral and the Customer in accordance with clause 6 below.
- 1.11 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Works.
- 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.
- 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.
- 2.4 The Customer acknowledges that the supply of Works on credit shall not take effect until the Customer has completed a credit application with Balmoral and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Works requested exceeds the Customer’s credit limit and/or the account exceeds the payment terms, Balmoral reserves the right to refuse delivery.
- 2.6 Any advice, recommendation, information, assistance or service provided by Balmoral in relation to Materials or Works supplied is given in good faith to the Customer, or the Customer’s agent and is based on Balmoral’s own knowledge and experience and shall be accepted without liability on the part of Balmoral. Where such advice or recommendations are not acted upon then Balmoral shall require the Customer or their agent to authorise commencement of the Works in writing. Balmoral shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that Balmoral shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by Balmoral in the formation and/or administration of this Contract; and/or
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Balmoral in respect of the Works.
- 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 wilful misconduct of Balmoral; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Authorised Representatives

- 4.1 The Customer acknowledges that Balmoral shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to Balmoral, that person shall have the full authority of the Customer to order any Works, and/or to request any

variation thereto on the Customer's behalf. The Customer accepts that they will be solely liable to Balmoral for all additional costs incurred by Balmoral (including Balmoral's profit margin) in providing any Works, or variation/s requested thereto by the Customer's duly authorised representative.

5. Change in Control

5.1 The Customer shall give Balmoral not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by Balmoral as a result of the Customer's failure to comply with this clause.

6. Price and Payment

6.1 At Balmoral's sole discretion the Price shall be either:

- (a) as indicated on invoices provided by Balmoral to the Customer in respect of Works performed or Materials supplied; or
- (b) the Price as at the date of delivery of the Works according to Balmoral's current price list; or
- (c) Balmoral's quoted Price (subject to clause 6.2) which shall be binding upon Balmoral provided that the Customer shall accept Balmoral's quotation in writing within thirty (30) days.

6.2 Balmoral reserves the right to change the Price:

- (a) if a variation to the Materials which are to be supplied is requested; or
- (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
- (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the Worksite, obscured building/Worksite defects, incorrect measurements, plans and/or specifications provided by the Customer, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, lack of required utilities, remedial work required due to existing workmanship being of a poor quality or non-compliant to the building code, hard rock barriers below the surface, iron reinforcing rods in concrete or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Works; or
- (d) in the event of increases to Balmoral in the cost of labour or Materials which are beyond Balmoral's control.

6.3 Variations will be charged for on the basis of Balmoral's quotation, and will be detailed in writing, and shown as variations on Balmoral's invoice. The Customer shall be required to respond to any variation submitted by Balmoral within ten (10) working days. Failure to do so will entitle Balmoral 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.

6.4 At Balmoral's sole discretion a non-refundable deposit may be required.

6.5 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by Balmoral, which may be:

- (a) by way of progress payments in accordance with Balmoral's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the Worksite but not yet installed; or
- (b) seven (7) days or fourteen (14) days following the date as stated on the invoice which is posted to the Customer's address or address for notices;
- (c) the date specified on any invoice or other form as being the date for payment; or
- (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Balmoral.

6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Balmoral.

6.7 Balmoral may in its discretion allocate any payment received from the Customer towards any invoice that Balmoral determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Balmoral may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Balmoral, payment will be deemed to be allocated in such manner as preserves the maximum value of Balmoral's Purchase Money Security Interest (as defined in the PPSA) in the Materials.

6.8 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 Balmoral nor to withhold payment of any invoice because part of that invoice is in dispute.

6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Balmoral an amount equal to any GST Balmoral must pay for any supply by Balmoral under this or any other contract for the sale of the Materials. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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.

7. Provision of the Works

7.1 Subject to clause 7.2 it is Balmoral's responsibility to ensure that the Works start as soon as it is reasonably possible.

7.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Balmoral claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Balmoral's control, including but not limited to any failure by the Customer to:

- (a) make a selection; or
- (b) have the Worksite ready for the Works; or
- (c) notify Balmoral that the Worksite is ready.

7.3 At Balmoral's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.

7.4 Balmoral may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

7.5 Any time specified by Balmoral for delivery of the Works is an estimate only and Balmoral will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that Balmoral is unable to supply the Works as agreed

solely due to any action or inaction of the Customer, then Balmoral shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

8. Worksite Access and Condition

8.1 Balmoral is not responsible for the removal of rubbish from or clean-up of the building/construction Worksite/s. All rubbish generated by Balmoral will be placed in a designated areas appointed by the Customer but the responsibility of removal of same is the Customer or the Customer's agent, unless otherwise agreed.

8.2 It is the intention of Balmoral and agreed by the Customer that:

- (a) the Customer shall ensure that Balmoral has clear and free access to the Worksite at all times to enable them to undertake the Works (including carrying out Worksite inspections, gain signatures for required documents, and for the delivery and installation of the Materials). Balmoral shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Balmoral; and
- (b) it is the Customer's responsibility to provide Balmoral, while at the Worksite, with adequate access to available water, electricity, toilet and washing facilities.

8.3 The Customer agrees to be present at the Worksite when and as reasonably requested by Balmoral and its employees, contractors and/or agents.

8.4 Worksite Inductions

- (a) in the event the Customer requires an employee or sub-contractor of Balmoral to undertake a Worksite induction during working hours, the Customer will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Customer shall be liable to pay Balmoral's standard (and/or overtime, if applicable) hourly labour rate; or
- (b) where Balmoral is in control of the Worksite, the Customer and/or the Customer's third party contractors must initially carry out Balmoral's Health & Safety induction course before access to the Worksite will be granted. Inspection of the Worksite during the course of the Works will be by appointment only and unless otherwise agreed, in such an event the Customer and/or third party acting on behalf of the Customer must at all times be accompanied by Balmoral.

9. Customer's Responsibility

9.1 The Customer agrees that:

- (a) if Balmoral notifies the Customer that the Contract intends to store on the site of the Works, materials and articles for use in the Works, the Customer shall designate an area for storage and shall take all reasonable precautions to protect any such materials and articles stored on site from destruction, damage or theft; and
- (b) the Customer has ensured that the materials specified and accepted by the Customer are the correct type, size quantity, colour, finish quality and standard, and conform in every detail with the Customer's requirements; and
- (c) the Customer has ensured that any specifications, diagrams, drawings and dimensions submitted with this quotation are correct and conform in every detail with the Customer's requirements stated by the Customer to Balmoral; and
- (d) any description, specifications, diagrams, drawings and particulars of weights and dimensions submitted with this quotation are approximate only and do not form part of the contract; and
- (e) the accuracy of specifications, diagrams, plans and drawings are the Customer's exclusive responsibility and the Customer does not rely on Balmoral's skill or judgement in this respect and Balmoral is entitled to rely on such documents but shall not be liable for any consequent error by Balmoral or the consequences of any error thereby arising.

10. Risk

10.1 Risk of damage to or loss of the Materials passes to the Customer on Delivery and the Customer must insure the Materials on or before Delivery.

10.2 If any of the Materials are damaged or destroyed following delivery but prior to ownership passing to the Customer, Balmoral is entitled to receive all insurance proceeds payable for the Materials. The production of these terms and conditions by Balmoral is sufficient evidence of Balmoral's rights to receive the insurance proceeds without the need for any person dealing with Balmoral to make further enquiries.

10.3 If the Customer requests Balmoral to leave Materials outside Balmoral's premises for collection or to deliver the Materials to an unattended location then such Materials shall be left at the Customer's sole risk.

10.4 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring standards.

10.5 The Customer acknowledges that Balmoral is only responsible for parts that are replaced by Balmoral, and in the event that other Materials, subsequently fail, the Customer agrees to indemnify Balmoral against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.

11. Installation

11.1 The Customer warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) that Balmoral, its employees or Balmoral's reasonably form the opinion that the Customer's premises is not safe for the installation of Materials to proceed then Balmoral shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 7.2 above) until Balmoral is satisfied that it is safe for the installation to proceed. Balmoral may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed but all such works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.

11.2 Whilst the final location of the condensing unit is at the discretion of the Customer, a charge will apply as a variation as per clause 6.2, if the Customer requests the unit to not be located adjacent to the external wall, due to the underground piping required.

- 11.3 The final location of the wall, window or floor unit must be determined on site by the Customer.
- 11.4 Balmoral shall upon installation ensure that all installed Materials meet current industry standards applicable to noise levels, however Balmoral cannot guarantee that noise levels will remain constant post installation as the Materials may be impacted by many factors such as the weather, lack of maintenance, tampering etc.
- 11.5 In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Customer shall be responsible for any and all costs involved.
- 11.6 The Customer acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- 11.7 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Customer then the Customer agrees to notify Balmoral immediately upon any proposed changes. The Customer agrees to indemnify Balmoral against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.2.

12. Underground Locations / Hidden Services

- 12.1 Prior to Balmoral commencing any work the Customer must advise Balmoral of the precise location of all services on the Worksite and clearly mark the same. The mains and 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 the Worksite.
- 12.2 Whilst Balmoral will take all care to avoid damage to any services the Customer agrees to indemnify Balmoral 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 12.1.

13. Compliance with Laws

- 13.1 The Customer and Balmoral 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, including any work health and safety laws (WHS) relating or any other relevant safety standards or legislation pertaining to the Works.
- 13.2 Both parties acknowledge and agree:
 - (a) to comply with the National Construction Code of Australia (NCC) and the Building Products (Safety) Act 2017, in respect of all workmanship and building products to be supplied during the course of the Works; and
 - (b) that Works will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 13.3 Where the Customer has supplied products for Balmoral to complete the Works, the Customer acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in Balmoral's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with state and/or territory regulations, then Balmoral shall be entitled, without prejudice, to halt the Works until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 6.2.
- 13.4 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.
- 13.5 Balmoral shall comply with the terms and conditions of all such consents and approvals in so far as such consents and approvals relate to the carrying out of the Works.

14. Title

- 14.1 Balmoral and the Customer agree that ownership of the Materials shall not pass until:
 - (a) the Customer has paid Balmoral all amounts owing to Balmoral; and
 - (b) the Customer has met all of its other obligations to Balmoral.
- 14.2 Receipt by Balmoral 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.
- 14.3 It is further agreed that until ownership of the Materials passes to the Customer in accordance with clause 14.1:
 - (a) the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Balmoral on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for Balmoral and must pay to Balmoral the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
 - (c) the production of these terms and conditions by Balmoral shall be sufficient evidence of Balmoral's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Balmoral to make further enquiries;
 - (d) the Customer must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for Balmoral and must pay or deliver the proceeds to Balmoral on demand;
 - (e) the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Balmoral and must sell, dispose of or return the resulting product to Balmoral as it so directs;
 - (f) unless the Materials have become fixtures the Customer irrevocably authorises Balmoral to enter any premises where Balmoral believes the Materials are kept and recover possession of the Materials;
 - (g) Balmoral may recover possession of any Materials in transit whether or not delivery has occurred;
 - (h) the Customer shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Balmoral;
 - (i) Balmoral may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.

15. Personal Property Securities Act 2009 (“PPSA”)

- 15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 15.2 Upon assenting to these terms and conditions in writing the Customer 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 Materials and/or collateral (account) – being a monetary obligation of the Customer to Balmoral for Works – that have previously been supplied and that will be supplied in the future by Balmoral to the Customer.
- 15.3 The Customer 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 Balmoral 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 1.1(a)(i) or 1.1(a)(ii);
 - (b) indemnify, and upon demand reimburse, Balmoral 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 Materials charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Balmoral;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of Balmoral;
 - (e) immediately advise Balmoral of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 15.4 Balmoral and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 15.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by Balmoral, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Customer shall unconditionally ratify any actions taken by Balmoral under clauses 15.3 to 15.5.
- 15.9 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

16. Security and Charge

- 16.1 In consideration of Balmoral agreeing to supply the Materials, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Customer indemnifies Balmoral from and against all Balmoral's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Balmoral's rights under this clause.
- 16.3 The Customer irrevocably appoints Balmoral and each director of Balmoral as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Customer's behalf.

17. Defects, Warranties and Returns, Competition and Consumer Act 2010 (“CCA”)

- 17.1 The Customer must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify Balmoral in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Balmoral to inspect the Materials or to review the Works provided.
- 17.2 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).
- 17.3 Balmoral acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Balmoral makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. Balmoral's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.5 If the Customer is a consumer within the meaning of the CCA, Balmoral's liability is limited to the extent permitted by section 64A of Schedule 2.
- 17.6 If Balmoral is required to replace any Materials under this clause or the CCA, but is unable to do so, Balmoral may refund any money the Customer has paid for the Materials.
- 17.7 If Balmoral is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then Balmoral may refund any money the Customer has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Customer which were not defective.
- 17.8 If the Customer is not a consumer within the meaning of the CCA, Balmoral's liability for any defect or damage in the Materials is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by Balmoral at Balmoral's sole discretion;
 - (b) limited to any warranty to which Balmoral is entitled, if Balmoral did not manufacture the Materials;
 - (c) otherwise negated absolutely.
- 17.9 Subject to this clause 17, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 17.1; and
 - (b) Balmoral has agreed that the Materials are defective; and

- (c) the Materials are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 17.10 Notwithstanding clauses 17.1 to 17.9 but subject to the CCA, Balmoral 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 Customer failing to properly maintain or store any Materials;
 - (b) the Customer using the Materials for any purpose other than that for which they were designed;
 - (c) the Customer continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Works by the Customer or any third party without Balmoral's prior approval;
 - (e) the Customer failing to follow any instructions or guidelines provided by Balmoral;
 - (f) fair wear and tear, any accident, or act of God.
- 17.11 Balmoral may in its absolute discretion accept non-defective Materials for return in which case Balmoral may require the Customer to pay handling fees of up to five percent (5%) of the value of the returned Materials plus any freight costs.
- 17.12 Notwithstanding anything contained in this clause if Balmoral is required by a law to accept a return then Balmoral will only accept a return on the conditions imposed by that law.

18. Intellectual Property

- 18.1 The Customer warrants that all designs, specifications or instructions given to Balmoral will not cause Balmoral to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Balmoral against any action taken by a third party against Balmoral in respect of any such infringement.

19. Default and Consequences of Default

- 19.1 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 Balmoral's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Customer owes Balmoral any money the Customer shall indemnify Balmoral from and against all costs and disbursements incurred by Balmoral in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Balmoral's contract default fee, and bank dishonour fees).
- 19.3 Further to any other rights or remedies Balmoral may have under this Contract, if a Customer has made payment to Balmoral, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Balmoral under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 19.4 Without prejudice to Balmoral's other remedies at law Balmoral shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Balmoral shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Balmoral becomes overdue, or in Balmoral's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by Balmoral;
 - (c) the Customer becomes insolvent or bankrupt, 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 Customer or any asset of the Customer.

20. Cancellation

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

21. Privacy Policy

- 21.1 All emails, documents, images or other recorded information held or used by Balmoral is Personal Information, as defined and referred to in clause 21.3, and therefore considered Confidential Information. Balmoral 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"). Balmoral acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Balmoral that may result in serious harm to the Customer, Balmoral will notify the Customer 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 Customer by written consent, unless subject to an operation of law.

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- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to Balmoral in respect of Cookies where the Customer utilises Balmoral's website to make enquiries. Balmoral 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 Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Balmoral when Balmoral sends an email to the Customer, so Balmoral may collect and review that information ("collectively Personal Information")
- If the Customer consents to Balmoral's use of Cookies on Balmoral's website and later wishes to withdraw that consent, the Customer may manage and control Balmoral's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 21.3 The Customer agrees for Balmoral 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 Customer in relation to credit provided by Balmoral.
- 21.4 The Customer agrees that Balmoral may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (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
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 21.5 The Customer consents to Balmoral being given a consumer credit report to collect overdue payment on commercial credit.
- 21.6 The Customer agrees that personal credit information provided may be used and retained by Balmoral for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Works; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Works.
- 21.7 Balmoral may give information about the Customer 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 Customer including credit history.
- 21.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 21.3 above;
 - (b) name of the credit provider and that Balmoral is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer'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 Customer no longer has any overdue accounts and Balmoral has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of Balmoral, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 21.9 The Customer shall have the right to request (by e-mail) from Balmoral:
- (a) a copy of the Personal Information about the Customer retained by Balmoral and the right to request that Balmoral correct any incorrect Personal Information; and
 - (b) that Balmoral does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 21.10 Balmoral will destroy Personal Information upon the Customer'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.
- 21.11 The Customer can make a privacy complaint by contacting Balmoral via e-mail. Balmoral 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 Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

22. Service of Notices

- 22.1 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.
- 22.2 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.

23. Trusts

- 23.1 If the Customer 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 Balmoral may have notice of the Trust, the Customer covenants with Balmoral as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - (b) the Customer 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 Customer against the Trust or the trust fund. The Customer 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 Customer will not without consent in writing of Balmoral (Balmoral will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer 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.

24. Building and Construction Industry Security of Payments Act 1999

- 24.1 At Balmoral's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 24.2 Nothing in this agreement is intended to have the affect 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.

25. General

- 25.1 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.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which Balmoral has its principal place of business, and are subject to the jurisdiction of the Manly Courts in that state.
- 25.3 Subject to clause 17, Balmoral 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 Balmoral of these terms and conditions (alternatively Balmoral's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 25.4 Balmoral may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 25.5 The Customer cannot licence or assign without the written approval of Balmoral.
- 25.6 Balmoral may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Balmoral's sub-contractors without the authority of Balmoral.
- 25.7 The Customer agrees that Balmoral may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Balmoral to provide Works to the Customer.
- 25.8 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.
- 25.9 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.