

CONTRACTOR ENGAGEMENT TERMS

These terms (**Terms**) together with the purchase order between Taste Building Group Pty Ltd ACN 146 796 849 trading as Quantum Built of 16 – 18 Cahill Street, Annandale NSW 2038 (**Builder**) and a contractor named in the purchase order (**Contractor**) (**Purchase Order**) constitute the entire agreement between the parties as to the works described in the Purchase Order (**Works**) (**Agreement**). The date the Agreement is entered into between the parties is the date of the Purchase Order.

Background

- A. The Builder operates a business of home building and home renovation services.
- B. The Contractor operates a business of providing the services and supplying the products relating to the Works.
- C. The Builder wishes to engage the Contractor to perform the Works and the Contractor agrees to perform the Works in accordance with the Agreement.

1 Interpretation

In this Agreement:

- 1.1 Words indicating the singular include the plural and vice versa and words indicating any gender includes the other gender.
- 1.2 Headings are for reference only and do not affect the construction of the Agreement.
- 1.3 A reference to a party if more than one is to them jointly and severally.
- 1.4 Any reference to a statute, ordinance, code or other law includes all regulations and other instruments and all consolidations, amendments, re-enactment or replacements.
- 1.5 Any reference to 'dollars' or '\$' is a reference to the Australian currency.
- 1.6 Any failure to exercise (or delay) in exercising any right, power or privilege under this Agreement on the part of the Hotelier or the Contractor will not operate as a waiver nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise of any other right, power or privilege.

2 Scope

- 2.1 The Agreement sets out responsibilities and obligations of the Contractor to perform and complete the Works by the

completion date noted in the Purchase Order (**Completion Date**) with due care and skill in accordance with all relevant plans and specifications and in compliance with the requirements of the Building Code of Australia as relevant to the Works.

- 2.2 Nothing in this Agreement will override any applicable legislation or restrict the power and authority of the Builder to exercise, at its election or as it considers necessary, full and proper control of the Works.

3 Contract Term

- 3.1 The Contractor must complete the Works by the Completion Date. The Contractor confirms that the Contractor is able to complete the Works by the Completion Date and acknowledges that Completion Date is time of the essence for the completion of the Works.
- 3.2 The Builder will provide an extension of time to the Contract to complete the Works if the delay to complete the Works has been caused by the Builder.
- 3.3 If the Contractor does not complete the Works by the Completion Date or within the extended time, agreed to in writing by the Builder, the Contractor must pay or allow by way of liquidated damages an amount of \$500.00 per day for the period during which the Works remain incomplete.

4 Performance of Works

- 4.1 If the Contractor believes that there is a discrepancy or errors in the plans and the specifications, the Contractor must immediately advise the Builder of the same and seek clarification or instructions as to the rectification.
- 4.2 The Contractor agrees that in performing the Works, the Contractor must:
 - 4.2.1 observe and comply with all applicable laws and legislation including where necessary, on behalf of the Builder;
 - 4.2.2 exercise due care, skill and judgment at all times in accordance with the highest professional standards;
 - 4.2.3 complete the Works in a timely manner;
 - 4.2.4 promptly bring to the attention of the Builder, either verbally or in writing any issue that may

- have a material impact (whether reputational, legal or financial) on the completion of the Works, or the business of the Builder in general; and
- 4.2.5 comply with all reasonable and lawful directions or requirements of the Builder.

5 Payment terms

- 5.1 Claims for payment by the Contractor must relate to the total cost for the Works noted in the Purchase Order (**Contract Price**) and must be made in accordance with the terms of the Agreement on the dates specified in the Purchase Order.
- 5.2 If there are no payment claim period details set out in the Purchase Order then Contractor can make a claim for payment every 4 calendar weeks from the commencement of work for the identified fairly valued (considering the Contract Price) work actually completed by the Contractor until the date of such payment claim.
- 5.3 If the Builder disputes a payment claim received, the Builder must advise the Contractor the reasons of such dispute within 10 days from receipt of the payment claim.
- 5.4 The Builder shall pay to the Contractor the amount of the payment claim if such claim complies with this clause 5 within 10 days from the date of receipt of the payment claim on the condition that the Contractor confirms that:
- 5.2.1 no wages or other payments such as works compensation or payroll tax are due and owing by the Contractor in respect of the Works as at the date of the payment claim;
- 5.2.2 confirmation that all subcontractors of the Contractor have been paid all amounts due and payable to them as at the date of the payment claim; and
- 5.2.3 provides a tax invoice for the payment claim amount and if relevant, a certificate of warranty.

6 Retention

- 6.1 The Builder may retain ten percent (10 %) from the amounts due under the payment claim until the sum retained is equal to five percent (5%) of the Contract Price.

- 6.2 Fifty percent (50%) of the money retained by the Builder will be released to the contractor on practical completion of the Works or when the Builder takes over the Works. The balance of any retention money must be released no later than the expiry of the Builder's head contract defects liability period, namely two (2) years for non-structural part of the Works and six (6) years for structural part of the Works.

7 Contractor's warranties

- 7.1 The Contractor warrants that the Contractor:
- 7.1.1 is competent to perform the Works;
- 7.1.2 will perform the Works diligently, with due care and skill;
- 7.1.3 will comply with any legislative requirements relating the Works or the Builder (including any permit or licensing requirements);
- 7.1.4 knows, understands and will adhere to all workplace health and safety requirements, including particular requirements notified by the Builder to the Contractor from time to time;
- 7.1.5 was provided by the Builder with a reasonable opportunity to negotiate the terms of the Agreement and have sought and obtained independent legal advice upon these terms before entering into the Agreement.

8 Insurance

- 8.1 The Contractor must at its cost ensure that it obtains and keeps current during the term of the Agreement insurance policies as follows:
- 8.1.1 Public Liability Insurance;
- 8.1.2 Directors and Officers Liability Insurance (if relevant);
- 8.1.3 Workers Compensation;
- 8.1.4 Personal Accident Insurance;
- 8.1.5 Voluntary Workers Insurance.

9 Variations to the Works

- 9.1 The Contractor agrees to vary the Works as reasonably required by the Builder. If

the Works are varied by the Contractor without the approval of the Builder, the Builder is not required to pay the Contractor for such additional or varied works.

- 9.2 All variations to the Works must be in writing.
- 9.3 If there is a change in the Contract Price as a result of the variation of the Works and such change in the Contract Price is agreed to by the parties, such amount is then either to be added to or deducted from the Contract Price.
- 9.4 If the variation to the Works result in an increase in the Contract Price and such increased price cannot be agreed to by the parties, then the Builder may, at his sole discretion, appoint another contractor to perform the Works subject to the variation.

10 Builder's rights

- 10.1 Contractor acknowledges that the Builder may require the Contractor to remove a person employed and or engaged by the Contractor from the site where the Works are taking place (**Work Site**) if, in the sole opinion of the Builder, acting reasonably, the said person is incompetent or misconducts themselves.

11 Contractor's obligations

- 11.1 Contractor must at all times keep the Work Site clean and tidy and free of rubbish and building waste.
- 11.2 On completion of the Works, the Contractor must remove all of Contractor's possessions and leave the Work Site clean and tidy.
- 11.3 If the Contractor fails to comply with clause 11.2, the Builder shall provide the Contractor with a two (2) days notice to remedy the breach, failing which, the Builder may perform Contractor's obligations noted in clause 11.2 and deduct the cost incurred as a result from the moneys due to the Contractor.

12 Damage and Defects

- 12.1 Contractor is liable and agrees to pay to the Builder a cost of making good any damage caused by the Contractor or Contractor's employees or contractors to the work of the Builder or the Work Site.
- 12.2 Contractor agrees to maintain and make good any and all defects in the Works within 10 days from the date of receipt of the notice requiring such defects to be

made good, unless the defects must be made good as a matter of urgency, until the expiry of the Builder's defects liability period under the head contract.

- 12.3 If the Contractor fails to comply with clause 12.2, the Builder shall arrange for other parties to carry out the works and the cost of such works must be paid for by the Contractor.

13 Termination of Agreement

- 13.1 The Builder may terminate this Agreement by notice in writing if:
 - 13.1.1 the Contractor is in breach of this Agreement and fails to remedy such breach within a reasonable time from such breach occurring;
 - 13.1.2 there is an insolvency event in respect of the Contractor;
 - 13.1.3 the Contractor commits an act of dishonesty or fraud or is otherwise dishonest or fraudulent in completing the Works; or
 - 13.1.4 the head contract is terminated for any reason; andthe Contractor is only entitled to receive payment for the work carried out to the date of termination and any expense incurred in connection with the Works. The Contractor is not entitled to recover loss of profits for any work not executed.
- 13.2 The Contractor may terminate this Agreement if:
 - 13.2.1 the Builder is in breach of its obligations under this Agreement and fails to remedy such breach within a reasonable time of the Contractor providing written notice to the Builder, which shall not be less than 10 days of delivery of such notice;
 - 13.2.2 there is an insolvency event in respect of the Builder.
- 13.3 The termination of this Agreement is without prejudice to any claim, which either party may have against the other in respect of any breach of the Agreement that occurs prior to the date of termination of the Agreement.

14 Dispute Resolution

- 14.1 If a dispute arises out of or relates to this Agreement including any dispute as to the meaning, performance, validity, subject matter, breach or termination of

this Agreement or as to any claim in tort, equity or pursuant to any statute, neither party shall commence proceedings in any court or seek arbitration relating to such dispute unless it has complied with the following paragraphs of this clause except where the party seeks urgent interlocutory relief.

- 14.2 A party to this Agreement claiming that a dispute has arisen under or in relation to this Agreement must give written notice to the other party to the Agreement specifying the nature of the dispute.
- 14.3 On receipt of that notice the other party must endeavour, in good faith, within five (5) business days, to meet with the aggrieved party to resolve the dispute.
- 14.4 In the event the dispute is not resolved after following the dispute resolution procedure agreed under this clause, either party shall be entitled to commence whatever proceedings that party deems appropriate in a Court of New South Wales in respect of the dispute.
- 14.5 If the Contractor wishes to make an adjudication application for a payment claim, the Contractor agrees that the Contractor will not make such an application unless:
- 14.5.1 the Contractor has notified the Builder, within the period of 20 business days immediately following the due date for payment, of the Contractor's intention to apply for adjudication of the payment claim, and
- 14.5.2 the Builder is given five (5) days to provide a payment schedule to the Contractor after receiving such Contractor's notice.

15 GST

- 15.1 Unless expressly included, the consideration for any supply under or in connection with this Agreement does not include GST.
- 15.2 If GST is imposed on a taxable supply made under, by reference to, or in connection with this Agreement, then the consideration provided for that supply is increased by the rate at which that GST is imposed.

16 General provisions

16.1 Notices

- 16.1.1 Any notice, approval, request, demand or other communication (**Notice**) to be given under this Agreement must be in writing and must be served personally; or sent by ordinary or registered post to the address of the party specified in this Agreement (or such other address as that party notifies in writing).
- 16.1.2 A notice given personally will be served on delivery or if sent by post, it will be served five days after posting.

16.2 Governing Law

This Agreement is governed by the laws of the state of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

16.3 Waiver

The failure or omission of a party at any time to:

- 16.3.1 enforce or require the strict observance of or compliance with any provision of this Agreement; or
- 16.3.2 exercise any election or discretion under this Agreement,

will not operate as a waiver of them or the rights of a party, whether express or implied, arising under this Agreement.

16.4 Severability

If any part of this Agreement is or becomes illegal, invalid or unenforceable in any relevant jurisdiction, the legality, validity or enforceability of the remainder of the Agreement will not be affected and this Agreement will be read as if the part had been deleted.

16.5 Variations

No variation of this Agreement is valid or binding upon any party to the Agreement unless made in writing and

duly executed or signed on behalf of that party.

16.6 Assignment

The Contractor may not assign its interest under this Agreement without the prior written consent of the Builder, which may be given in its absolute discretion.

16.7 Entire Agreement

This Agreement constitutes the entire Agreement between the parties for the matters dealt with in this Agreement. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Agreement.