

TERMS OF TRADE

These terms and conditions are between **EPOXY POINT** (ABN 40 641 681 594) (**we, us or our**) and you, the person or entity stated in the Quote (**you or your**), together the Parties and each a Party. Together, these terms and conditions and the Quote (attached to these Terms or the Quote) form the entire agreement under which we will provide the Services to you (**Terms**).

Our Disclosures: Please read these Terms carefully and contact us if you have any questions. By accepting these Terms, you agree that:

- subject to your Consumer Law Rights, we exclude our liability for any loss or damage which is the inevitable and unavoidable part of performing the Services; and
- subject to your Consumer Law Rights, our liability for the provision of the Services will be limited to, at our discretion 100% of the Price.

1. Acceptance

1.1 You have requested the Services set out in the Quote, and you are taken to accept these Terms by the earlier of:

- (a) signing and returning the Quote to us;
- (b) accepting the Quote online or sending an email to us accepting the Quote (expressly or impliedly);
- (c) instructing us to proceed with the Services; and
- (d) making part of full payment of the Price (including any deposit).

2. Services

2.1 We agree to provide the Services to you in accordance with these Terms (including any Specifications) and all applicable laws (including the National Construction Code) whether ourselves or through our Personnel.

3. Time

3.1 We will use our commercial best endeavours to provide the Services by the dates set out in the Quote, or where no date is specified, then within a reasonable period of time.

3.2 We will have no liability (including a failure to meet any date referred to in clause 3.1, for delays caused by one or more of the following events or circumstances:

- (a) a variation or deemed variation;
- (b) an act, omission or breach by you or any of your Personnel;
- (c) inclement weather;
- (d) delays in obtaining approvals for the Services from relevant Authorities; and
- (e) any other event or circumstance beyond our reasonable control (including Force Majeure Events).

3.3 If we are delayed as a result of your acts or omissions (other than acts or omissions expressly authorised or permitted by these Terms), you will be liable to pay to us reasonable delay damages for each day (or partial day) that we are delayed.

4. Australian Consumer Law

4.1 Certain legislation, including the Australian Consumer Law and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to

the Services which cannot be excluded, restricted or modified (**Consumer Law Rights**). To the extent that you maintain Consumer Law Rights a law, nothing in these Terms excludes those Consumer Law Rights.

4.2 Subject to your Consumer Law Rights, we exclude all warranties, and all material, work and services (including the Services) are provided to you without warranties, representations and guarantees of any kind, except where expressly provided in these Terms.

4.3 This clause 4 will survive the termination or expiry of these Terms.

5. Variations

5.1 All variations to the Services must be agreed in writing between the Parties and will be priced in accordance with any schedule of rates provided by us, or otherwise as reasonably agreed between the Parties. If we consider that any instruction or direction from you constitutes a variation to the scope of our obligations under these Terms, then we will not be obliged to comply with such instruction or direction unless agreed in accordance with this clause.

6. Your Personnel and Your Items

6.1 You are responsible for the acts or omissions, and any goods or services provided by your Personnel. You agree to ensure your Personnel cooperate with us and do not interfere with the supply of the Services.

6.2 You agree that any information, documentation, specifications, goods or services provided, or directions provided, by you or your Personnel in relation to the Services (**Your Items**) will be:

- (a) provided solely at your own risk, and you agree that we will assume no responsibility or Liability for Your Items;
- (b) fit for purpose, of merchantable quality and compliant with all applicable laws; and
- (c) sufficient to enable us to comply with our obligations under these Terms and all applicable laws,

and we will have no liability to you for any Liability, and you waive and release us from any such Liability, arising from Your Items.

7. Price and Payment

7.1 In consideration for us providing the Services, you agree to pay us the Price in accordance with these Terms.

7.2 When applicable, GST is payable on the Price and Expenses and will be clearly showing on our invoices. You agree to pay us an amount equivalent to the GST imposed on these charges.

7.3 Subject to the provisions of these Terms, and to the extent permitted by the Security of Payment Legislation:

- (a) you must pay any deposit set out in the Quote to us on the Commencement Date;
- (b) we may submit a payment claim to you on the last day of each month, for Services provided up to the last day of that month, and for any other amounts payable under these Terms;
- (c) you must, within 5 business days of receiving the payment claim from us, issue a payment schedule specifying the amount that you propose to pay to us in

- relation to the relevant payment claim, and including any reasons for withholding payment of any amount; and
- (d) you must pay to us the amount specified in your payment schedule within 7 business days of receiving the payment claim from us (**Payment Terms**).
- 7.4 If you fail to make payment of the Price or any amount payable under these Terms, we may:
- (a) after a period of 5 business days, cease providing the Services, and recover, as a debt due and immediately payable from you, our additional costs of doing so; and
- (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 2% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the relevant due date, in accordance with the Payment Terms.
- 7.5 You acknowledge and agree to pay us any travel and accommodation expenses noted in the Quote.
- 8. Warranties and Representations**
- 8.1 You represent, warrant and agree that:
- (a) you will comply with these Terms and all applicable Laws;
- (b) you have effected and will maintain appropriate insurance policies for the Site for the duration of our provision of the Services under these Terms;
- (c) you (and to the extent applicable, your Personnel) will cooperate with us, and promptly provide us with all documentation, information, instructions, facilities and access (including access to the Site) as may be reasonably necessary to enable us to provide the Services in accordance with these Terms;
- (d) all the information and documentation that you provide to us in connection with these Terms is true, correct and complete;
- (e) you will not infringe any third party rights in working with us and receiving the Services;
- (f) you will ensure that the Site is safe and free of harmful materials or substances;
- (g) you are responsible for obtaining, and providing to us if necessary, any access and Approvals from third parties necessary for the Services to be provided, at your cost;
- 9. Term and Termination**
- 9.1 These Terms will commence on the Commencement Date, and will continue until the earlier of the date:
- (a) the Services are supplied to you in accordance with these Terms; and
- (b) these Terms are terminated in accordance with this clause 9,
- (**Term**).
- 9.2 Either Party may terminate these Terms at any time by giving 30 days' notice in writing to the other Party.
- 9.3 These Terms will terminate immediately upon written notice by a Party (**Non-Defaulting Party**), if the other Party (**Defaulting Party**) breaches a material term of these Terms and that breach has not been remedied within 10 business days of the Defaulting Party being notified of the breach by the Non-Defaulting Party.
- 9.4 Upon expiry or termination of these Terms:
- (a) we will immediately cease providing the Services;
- (b) without limiting your Consumer Law Rights, you agree that any payments made by you to us are not refundable to you;
- (c) you are to pay for all Services provided prior to termination, including Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under these Terms;
- (d) by us pursuant to clause 9.3, you also agree to pay us our additional costs, reasonably incurred, and which arise directly from such termination (including recovery fees);
- 9.5 Termination of these Terms will not affect any rights or liabilities that a Party has accrued under it.
- 9.6 This clause 9 will survive the termination or expiry of these Terms.
- 10. Latent Conditions**
- 10.1 If we encounter any condition, event, circumstance, matter or thing in, on or around the Site or otherwise that could not have reasonably been foreseen or anticipated by us as at the date of the Quote, and that would or would likely result in us, you or any third party suffering or incurring additional cost or delay, or would require a change to the Quote, Services, Price, and/or these Terms (**Latent Condition**), during the provision of the Services, we will notify you as soon as reasonably practicable after becoming aware of the Latent Condition.
- 10.2 Any additional works, materials, costs or delays that we suffer or incur as a result of any Latent Conditions, or any instructions or directions given by you that are in addition to the Works, will constitute a deemed variation.
- 10.3 Any deemed variation for a Latent Condition, including in relation to the Price, will be handled in accordance with clause 5.1.
- 11. Liability**
- Despite anything to the contrary, but subject to your Consumer Law Rights, to the maximum extent permitted by law:
- (a) neither Party will be liable for any Consequential Loss;
- (b) a Party's liability for any Liability under, arising from, or in connection with, these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by that other Party to mitigate its loss; and
- (c) (in respect of any failure by us to comply with relevant Consumer Law Rights) our Liability is limited (at our discretion) to supplying the Services again or paying the cost of having the Services supplied again.
- (d) subject to clause 11(a) our maximum aggregate liability for any Liability arising from or in connection with these Terms will be limited to the 100% of the Price; and
- (e) we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by any loss or damage which is the inevitable and unavoidable part of performing the Services.
- 12. Intellectual Property**
- 12.1 As between the Parties:
- (a) we own all Intellectual Property Rights in Our Materials;

- (b) you own all Intellectual Property Rights in Your Materials; and
- (c) nothing in these Terms constitutes a transfer or assignment of any Intellectual Property Rights in Our Materials or Your Materials.
- 12.2 If you (if you are an individual) or any of your Personnel have any Moral Rights in any material provided, used or prepared in connection with these Terms, you agree to (and will procure that your Personnel) consent to our use or infringement of those Moral Rights.
- 12.3 This clause 12 will survive termination or expiry of these Terms.
- 13. Confidential Information**
- 13.1 Subject to clause 13.2, each Party must (and must ensure that its Personnel do) keep confidential, and not use or permit any unauthorised use of, confidential information provided by the other party.
- 13.2 Clause 13.1 does not apply where the disclosure is required by law or the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with these Terms and provided that the disclosing party ensures the adviser complies with the terms of clause 13.2.
- 13.3 This clause 13 will survive the termination of these Terms.
- 14. General**
- 14.1 **Amendment:** Subject to clause 5, these Terms may only be amended by written instrument executed by the Parties.
- 14.2 **Assignment:** Subject to clause 14.3, and **Error! Reference source not found.**, a Party must not assign, novate or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent is not to be unreasonably withheld).
- 14.3 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with these Terms, to a debt collector, debt collection agency, or other third party.
- 14.4 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Terms (including any question regarding its existence, validity or termination) (**Dispute**) without first complying with this clause 14.4. A Party claiming that a Dispute has arisen must give written notice to the other Party specifying the nature of the Dispute (**Dispute Notice**). The Parties must meet (whether in person, by telephone or video conference) within 10 Business Days of service of the Dispute Notice to seek (in good faith) to resolve the Dispute. If the Parties do not resolve the Dispute within 20 Business Days of the date the Dispute Notice was served (or such further period as agreed in writing by the Parties), either Party may refer the matter to mediation, administered by the Australian Disputes Centre in accordance with the Australian Disputes Centre Guidelines for Commercial Mediation. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction. This clause will survive termination or expiry of this Agreement.
- 14.5 **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under these Terms if such delay or failure is caused or contributed to by a Force Majeure Event. This clause will not apply to a party's obligation to pay any amount that is due and payable to the other Party under these Terms.
- 14.6 **Governing law:** These Terms are governed by the laws of Victoria. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 14.7 **GST:** If and when applicable, GST payable on the Price will be set out in our invoice. You agree to pay the GST amount at the same time as you pay the Price.
- 14.8 **Joint and Several Liability:** Where you constitute two or more individuals or entities, you will each be jointly and severally liable under these Terms.
- 14.9 **Notices:** Any notice given under these Terms must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 14.10 **Publicity:** Despite clause 13, you agree that we may advertise or publicise the broad nature of our provision of the Services to you, including on our website or in our promotional material.
- 14.11 **Privacy:** Each Party agrees to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.
- 14.12 **Relationship of Parties:** These Terms are not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- 14.13 **Survival:** Each clause, which by its nature survives termination, will survive the termination or expiry of these Terms.
- 14.14 **Subcontracting:** We may subcontract the provision of any part of the Services without your prior written consent. We agree that any subcontracting does not discharge us from any liability under these Terms and that we are liable for the acts and omissions of our subcontractor.
- 15. Definitions**
- 15.1 In these Terms, unless the context otherwise requires:
- ACL or Australian Consumer Law** means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended, from time to time.
- Approval** means any approval, consent, licence, permit, permission, application, registration or equivalent required to be obtained in connection with the Services by any Authority or any law.
- Authority** means any national, State, Territory or local government departments, bodies, instrumentalities or other public authorities the approval of which is applicable to or necessary for the provision of the Services.
- Commencement Date** means the date these Terms are accepted in accordance clause 1.1.
- Consequential Loss** means, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise:
- (a) any loss or damage that cannot be considered to arise according to the usual course of things from the relevant breach, act or omission, whether or not such loss or damage may reasonably be supposed to have been in the contemplation of the Parties at the time they entered into these Terms as the probable results of the relevant breach, act or omission; and/or

- (b) without limiting subclause (a), any real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data.

However, the Parties agree that your obligation to pay us the Price under these Terms will not constitute "Consequential Loss".

Consumer Law Rights has the meaning given in clause 4.1.

Expenses means any disbursements, including travel and accommodation costs and third party costs, reasonably and directly incurred by us for the purpose of the provision of the Services.

Force Majeure Event means any event or circumstance which is beyond a Party's reasonable control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

Intellectual Property Rights or Intellectual Property means any and all existing future rights throughout the world conferred by statute, common law, equity or any corresponding law in relation to any copyright, patents or trade marks, domain names, know-how, inventions, processes, trade secrets or Confidential Information; or circuit layout, software, computer programs, databases or source codes, including any application or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing, whether or not registered or registrable.

Laws means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any government or similar authority with the power to bind or impose obligations on the relevant Party in connection with these Terms or the supply of Services.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party, a Party to these Terms or otherwise.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth).

New Materials means all Intellectual Property developed, adapted, modified or created by or on behalf of us or you or any of your or our respective Personnel in connection with these Terms or the supply of the Services, whether before or after the date of these Terms and any improvements, modifications or enhancements of such Intellectual Property, but excludes Our Materials and your Materials.

Our Materials means all Intellectual Property which is owned by or licensed to us and any improvements, modifications or enhancements of such Intellectual Property.

Personnel means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

Price means the price set out in the Quote for the provision of the Services, as adjusted in accordance with these Terms, and includes all Expenses and any deposit set out in the Quote.

Quote means the quote (including any online quote) to which these Terms are attached or incorporated by reference.

Security of Payment Legislation means the applicable legislation governing security of payment in the State or Territory where the Site is located.

Services means the services to be provided by us to you under these Terms, as expressly set out in the Quote, as adjusted in accordance with these Terms.

Site means the site as set out in the Quote, and includes any other property or sites adjoined to, surrounding or neighbouring the Site that may be necessary to access or use for the provision of the Services.

Specifications means any specifications for the Services, and, if applicable, as further particularised in an attachment to these Terms or the Quote.

Term has the meaning given in clause 9.1.

Your Items has the meaning given in clause 6.2.

Your Materials means all Intellectual Property owned or licensed by you or your Personnel before the Commencement Date (which is not connected to these Terms) and/or developed by or on behalf of you or your Personnel independently of these Terms and any improvements, modifications or enhancements of such Intellectual Property.