

Arkhefloor Pty Ltd (ACN 663 910 763) - Terms & Conditions of Trade

1. Parties

- 1.1. "Supplier" means Arkhefloor Pty Ltd (ACN 663 910 763), its successors and assigns or any person acting on behalf of and with the authority of Arkhefloor Pty Ltd.
- 1.2. "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Works.

2. Price and Payment

- 2.1. At the Supplier's sole discretion, the Price shall be either:
 - 2.1.1. as indicated on invoices specifying in detail the works to be completed provided by the Supplier to the Client; or
 - 2.1.2. the Supplier's quoted Price (subject to clause 2.2) which shall be binding upon the Supplier provided that the Client shall accept the Supplier's quotation in writing within fourteen (14) days.
- 2.2. Any rates published, quoted by, or invoiced by the Supplier may be modified if, without the prior notification of the Supplier, the Works:
 - 2.2.1. are to take place outside the Adelaide metropolitan area;
 - 2.2.2. require staged completion;
 - 2.2.3. require multiple site visits;
 - 2.2.4. are to take place on public holidays, weekends, or otherwise outside regular working hours; or
 - 2.2.5. are limited by restricted access, or special site clearance(s) and/or induction(s);
 - 2.2.6. require more than one set of test type;
- 2.3. The Supplier reserves the right to change the Price:
 - 2.3.1. if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - 2.3.2. where additional Works are required due to the discovery of hidden or unidentifiable difficulties which are only discovered on commencement of the Works; or
 - 2.3.3. in the event of increases to the Supplier in the cost of labour or materials which are beyond the Supplier's control.
- 2.4. Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice.
 - 2.4.1. The Client will be given ten (10) days to respond to such variations.
 - 2.4.2. By failing to do so within the prescribed time, the Client agrees to pay the cost of variation.
- 2.5. The Price will be payable upon presentation of the Report, or as agreed at the Supplier's sole discretion.
 - 2.5.1. The Supplier may at their sole discretion provide an extension to the payment due date.
- 2.6. Payment may be made by cash, cheque, bank cheque, electronic/on-line banking/EFT/EFTPOS, or by any other method as agreed to between the Client and the Supplier.
- 2.7. The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 2.8. Unless otherwise stated the Price does not include GST. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

3. Scope of Work

- 3.1. General Nature and Exclusions
 - 3.1.1. The Supplier will complete testing to the relevant Australian Standards, namely:
 - 3.1.1.1. AS 2455.1:2019
 - 3.1.1.2. AS 2455.2:2019
 - 3.1.1.3. AS 1884:2021
 - 3.1.2. The Client will notify the Supplier of the Australian Standard applicable to their site.
 - 3.1.2.1. If the Client fails to do so, the Supplier will not be held liable for work done satisfactorily to an alternative standard listed in clause 3.1.1.
 - 3.1.2.2. Any work requested by the Client outside of the standards listed under clause must be agreed upon with the Supplier in writing, and attracts a minimum charge of \$320.00 ex. GST, or as otherwise agreed with the Supplier.
 - 3.1.3. The Supplier will present a Report of results to the Client containing an accurate representation of the moisture level of the subfloor at the time of testing.
 - 3.1.4. The Supplier will not be held liable for failing to test areas of the subfloor inaccessible to them upon arrival to the site.
 - 3.1.5. The Client acknowledges that the test results and information provided in this Report are limited to the time, condition, and state in which they were taken.
 - 3.1.6. The Supplier takes no responsibility for any change in the tested conditions of the subfloor.
 - 3.1.7. The Supplier will not make any assessment of compliance of the subfloor with the requirements of any Act, regulation, Australian Standard, ordinance, or by-law.
 - 3.1.8. The Client acknowledges that there may be obligations placed on them to rectify issues discovered as a result of the Supplier's testing.
 - 3.1.9. The Supplier will not make recommendations for rectification of any potential deficiencies evident from the results.
 - 3.1.10. The Supplier will not be held responsible for any remarks made which are interpreted by the Client as 'recommendations' as per clause 3.1.9.
 - 3.1.11. The Supplier takes no responsibility for the Client's failure to make any such rectification, or any other actions which may adversely affect the condition of the subfloor.
 - 3.1.12. The Supplier takes no responsibility for any damage, including but not limited to mould damage, which may arise as a result of the Client's failure to address deficiencies evident from the Report.
- 3.2. Invasive hygrometer test – in-situ probe test
 - 3.2.1. The Supplier will conduct this test to the relevant international standard: ASTM F2170 – 19a
 - 3.2.2. The Supplier shall not be liable for any damage caused by this test which is the result of the Client's failure to disclose information about the nature condition of the subfloor.
- 3.3. Surface-mounted hygrometer test – moisture vapour emissions test
 - 3.3.1. The Supplier will conduct this test to the relevant international standard: ASTM F1869 – 22
 - 3.3.2. This test shall only be conducted where subfloor concrete substrate is unsuitable to perform an invasive hygrometer test (as per clause 8.2). Conditions where this test shall be performed include:
 - 3.3.2.1. Post-tensioned cable slabs,
 - 3.3.2.2. Under floor heating, or
 - 3.3.2.3. As otherwise discussed and agreed upon with the Supplier in writing.
- 3.4. Any other test
 - 3.4.1. As requested by the Client and agreed by the Supplier, the Supplier may conduct tests outside the stated Australian and International Standards.
 - 3.4.2. The conditions of completion, and applicable standards are to be discussed and agreed in writing prior to the commencement of Works.

4. Clients Responsibilities

- 4.1. The Client shall arrange right of entry, facilitate physical entry to the property, and supply necessary information to enable the inspector to undertake the inspection.
- 4.2. The Client is obligated to provide the Supplier with any requested information prior to the commencement of Works.
- 4.3. If the Client fails to provide such requested information, the Supplier will not be held liable for any omissions in the Report resultant from this failure.

5. Delivery of the Works

- 5.1. The Supplier will ensure that the Works start as soon as reasonably possible on or after the agreed commencement date.
- 5.2. The Works commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Supplier claims an extension of time (by giving the Client notice) where completion is delayed by an event beyond the Supplier's control, including but not limited to any failure by the Client to:
 - 5.2.1. provide information to the Supplier about the nature and condition of the site; or
 - 5.2.2. have the site ready for the Works; or
 - 5.2.3. notify the Supplier that the site is ready.
- 5.3. Any time specified by the Supplier for delivery of the Works is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties.
- 5.4. In the event that the Supplier is unable to supply the Works as agreed solely due to any action or inaction of the Client, then the Supplier shall be entitled to charge a reasonable fee for resupplying the Works at a later time and date.

6. Cancellation

- 6.1. In the event that the Client cancels the delivery of Works after their commencement the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 6.2. The Client shall be liable for the agreed upon price if the Works are cancelled less than seven (7) days prior to their planned commencement date.
- 6.3. Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Works to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
- 6.4. The Supplier may cancel any agreement to which these terms and conditions apply at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Supplier for Works already performed. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.

7. Default and Consequences of Default

- 7.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment to the Supplier, at a rate of five percent (5%) per calendar month, compounding monthly.
- 7.2. If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Suppliers contract default fee, and bank dishonour fees).
- 7.3. Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any Work of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if;
- 7.4. any money payable to the Supplier becomes overdue, or in the Suppliers opinion the Client will be unable to make a payment when it falls due;
- 7.5. the Client has exceeded any applicable credit limit provided by the Supplier;
- 7.6. the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with
- 7.7. creditors, or makes an assignment for the benefit of its creditors; or
- 7.8. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

8. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 8.1. The Client must notify the Supplier within fourteen (14) days of the Works completion any alleged failure to comply with the description of Works or quote, or the conditions set out in these Terms & Conditions. Upon such notification, the Client must allow the Supplier to inspect and/or review the Works provided.
- 8.2. 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).
- 8.3. The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the NonExcluded Guarantees.
- 8.4. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works.
- 8.5. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 8.6. If the Client is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.
- 8.7. If the Supplier 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 the Supplier may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works which have been provided to the Client which were not defective.
- 8.8. If the Client is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Materials is:
 - 8.8.1. limited to the value of any express warranty or warranty card provided to the Client by the Supplier at the Supplier's sole discretion;
 - 8.8.2. limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Materials;
 - 8.8.3. otherwise negated absolutely.
- 8.9. Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.

9. Building and Construction Industry Security of Payments Act 2009

- 9.1. At the Supplier'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 2009 may apply.
- 9.2. 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 South Australia, except to the extent permitted by the Act where applicable.

10. Intellectual Property

- 10.1. The Supplier retains copyright of the Report format and any methodologies employed in testing.
- 10.2. The Client retains copyright of the information provided to them in the Report.

11. Errors and Omissions

- 11.1. The Client acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - 11.1.1. resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this contract; and/or
 - 11.1.2. contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Works.
- 11.2. 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 the Supplier; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

12. Change in Control

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

13. Definitions

- 13.1. "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
 - 13.1.1. if there is more than one Client, is a reference to each Client jointly and severally; and
 - 13.1.2. if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - 13.1.3. includes the Client's executors, administrators, successors and permitted assigns.
- 13.2. "Works" means all Works supplied by the Supplier to the Client at the Client's request from time to time.
- 13.3. "Report" means the compilation of testing data, and any resultant visual or textual representations of such data provided by the Supplier to the Client.
- 13.4. "Price" means the Price payable (plus any GST where applicable) for the Works as agreed between the Supplier and the Client in accordance with clause 2.
- 13.5. "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

14. Acceptance

- 14.1. The Client is taken to have exclusively accepted, and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 14.2. These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and the Supplier.
- 14.3. 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.

15. General

- 15.1. Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, arbitration in accordance with the Commercial Arbitration Act 2010 or its replacement(s).
- 15.2. 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.
- 15.3. These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia, the state in which the Supplier has its principal place of business and are subject to the jurisdiction of the Adelaide Courts in South Australia.
- 15.4. Subject to clause 15 the Supplier 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 Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 15.5. The Supplier may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 15.6. The Client cannot licence or assign without the written approval of the Supplier.
- 15.7. The Supplier 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 Client agrees and understands that they have no authority to give any instruction to any of the Supplier's subcontractors without the authority of the Supplier.
- 15.8. The Client agrees that the Supplier may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Supplier to provide Works to the Client.
- 15.9. 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.
- 15.10. 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.