

# Sonsa Markets Pty Ltd T/A Builders Market – Terms & Conditions of Trade

- 1.1 **Definitions**  
 "SM" means Sonsa Markets Pty Ltd T/A Sonsa Markets, its successors or assigns or any person acting on behalf of and with the authority of Sonsa Markets Pty Ltd T/A Sonsa Markets.
- 1.2 **Customer** means the person/s or any person acting on behalf of and with the authority of the Customer requesting SM 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 part of a Trust, shall be bound in their capacity as a trustee; and  
 (c) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.3 **Works** means all Works, drawings, designs, plans, schedules and products (including any Materials supplied by SM 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).
- 1.4 **Price** means the Price payable (plus any GST where applicable) for the Works as agreed between SM and the Customer in accordance with clause 5 below.
- 1.5 **GST** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
2. **Acceptance**  
 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, these terms and conditions of trade in its customer places in order for acceptance of delivery of any Works.  
 2.1 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 Customer and SM.  
 2.2 Where SM gives advice, recommendations, information, assistance or service to the Customer or the Customer's agent, regarding the Materials or Works then it is given in good faith and SM shall not be liable for any loss or damage, however arising, resulting from the Customer relying on the same.  
 2.3 The Customer acknowledges that the supply of Materials on credit shall not take effect until the Customer has given its written application with SM and it has been approved with a credit limit established for the account.  
 2.4 In the event that the supply of Materials request exceeds the Customer's credit limit and/or the account exceeds the payment terms, SM reserves the right to suspend delivery.  
 2.5 No work shall be undertaken on any levelling, slabbing, reparing or waterproofing of the timber floor, or the sub floor, and any rectification work required shall constitute a variation as per clause 5.2.  
 2.6 The Customer shall ensure whether any levelling of floors is required prior to its being laid by SM and a further additional cost will accrue if SM is required to first undertake levelling. SM bears no liability whatsoever to the Customer if there is to be any levelling problems whereby SM is not the contractor for the levelling.  
 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 (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
3. **Error or Omission**  
 3.1 The Customer acknowledges and accepts that SM shall, without prejudice, accept no liability in respect of any alleged or actual mistake(s) and/or omission(s):  
 (a) resulting from a clerical error made by SM 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 SM in respect of the Works.  
 3.2 In the event of an error and/or omission occurring in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of SM, the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.
4. **Change or Variation**  
 4.1 The Customer shall give SM 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 the Customer's name, address, contact phone, contact person or fax number, change of trustees or business practice). The Customer shall be liable for any loss incurred by SM as a result of the Customer's failure to comply with this clause.
5. **Price and Payment**  
 5.1 The price of the Materials shall be either:  
 (a) as indicated on invoices provided by SM to the Customer in respect of Works performed or Materials supplied; or  
 (b) the Price as stated on delivery of the Works according to SM's current price list; or  
 (c) SM's quoted Price (subject to clause 5.2) which shall be binding upon SM provided that the Customer shall accept SM's quotation in writing within thirty (30) days.  
 5.2 SM reserves the right to change the Price:  
 (a) if a variation to the Materials which are to be supplied is requested;  
 (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or  
 (c) where additional work is required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to accessing the site, pre-existing condition of structural supports to which Materials are to be affixed, prerequisite work by any third party not controlled by the Customer, change of site design, hidden gas and/or water etc) which are only discovered on commencement rates; or  
 (d) any variation as a result of fluctuations in currency exchange rates or in the work of increases to SM in the cost of taxes, levies, materials and labour which are beyond SM's control.  
 5.3 Variations will be charged for on the basis of SM's quotation, and will be detailed in writing, and shown as variations on SM's invoice. The Customer shall be required to respond to any variation submitted by SM within the time period specified in the variation to add to the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.  
 5.4 At SM's sole discretion a non-refundable deposit may be required.  
 5.5 Time for payment for all Works must be as essential, the Price will be payable by the Customer on the date(s) determined by SM, which may be:  
 (a) on completion of the Works; or  
 (b) by way of periodic payments in accordance with SM'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 site but not yet installed; or  
 (c) the date specified on any invoice or other form as being the date of payment; or  
 (d) any other date specified in writing by SM within the (30) days following the date of any invoice given to the Customer by SM.  
 5.6 Payment may be made by cash, cheque, bank cheque, electronic-line banking, credit card (subject to the successful completion of the other method as agreed between the Customer and SM). No AMEX cards will be accepted.  
 5.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed by the Customer by SM nor to withhold payment of any invoice because part of that invoice is in dispute.  
 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to SM an amount equal to any GST SM must pay for any supply by SM under this or any other contract, or for any supply of Materials or Works by SM to the Customer 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.
6. **Provision of the Works**  
 6.1 Subject to clause 6.2 it is SM's responsibility to ensure that the Works start as soon as it is reasonably practicable.  
 6.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that SM claims an extension of time (by giving the Customer written notice of the extension) which is caused by an event beyond SM'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 SM that the Works are to start.  
 6.3 At SM's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.  
 6.4 SM 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.  
 6.5 Any time specified by SM for delivery of the Works is an estimate only and SM will not be liable for any delay in the completion of the Works 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 SM is unable to supply the Works as agreed solely due to any action or inaction of the Customer, then SM 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.
7. **Risk**  
 7.1 SM retains ownership of the Materials under clause 10 then:  
 (a) where SM is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:  
 (i) the Customer or the Customer's nominated carrier takes possession of the Materials at SM's address; or  
 (ii) the Materials are delivered by SM or SM's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).  
 (b) where SM is to both supply and install Materials then SM shall maintain a contract works liability policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Customer.  
 7.2 Notwithstanding the provisions of clause 7.1 if the Customer specifically requests SM to leave Materials outside SM's premises for collection or to deliver the Materials to an unattended location then such Materials shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Customer's expense.  
 7.3 SM shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, SM accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.  
 7.4 Where SM is required to install the Materials, the Customer warrants that the structure of the premises or framing Materials are to be installed is sound and will sustain the installation and work incidental thereto.  
 7.5 Timber is a hygroscopic material subject to expansion and contraction; therefore, SM will accept no responsibility for gaps that may appear in the flooring during prolonged dry periods.  
 7.6 Timber is a natural material and may have variations in colour, shade, tone, and grain which may vary from samples provided. Whilst SM will make every effort to match sample to the finished Materials SM accepts no liability whatsoever where the samples differ to the finished Materials.  
 7.7 SM will not accept responsibility for any damage to the floor due to microenvironments caused such as air-conditioning, heating or large expanses of glass windows without curtains or blinds.  
 7.8 SM will take all reasonable steps to avoid contamination of the finished Materials and accept no responsibility for contamination by natural contaminants such as dust or hair which may be present at the worksite.  
 7.9 In the event of sanding and polishing of the timber flooring occurring at the worksite, then the Customer shall ensure that the timber flooring is protected with a suitable finish which may have an adverse effect. The Customer acknowledges that SM has informed the Customer that the persons should avoid entering the worksite until such time as the polished timber flooring area has been sealed with a suitable finish.  
 7.10 The Customer agrees that SM has informed the Customer that no persons should walk on freshly polished timber floors, nor replace furnishings on such flooring for the relevant prescribed period of time, usually for at least three (3) days following completion of the polishing.  
 7.11 SM will only inspect or view a timber floor from a standing position, as this is generally how you will be living on it. Minor marks or slight imperfections in the floor finish that can only be seen from a crawling or kneeling position will not be considered defects.  
 7.12 The Customer acknowledges that Materials supplied may:  
 (a) fade or change colour over time; and
- (b) expand, contract or distort as a result of exposure to heat, cold, weather; and  
 (c) crack or stain if exposed to certain substances; and  
 (d) be damaged or disfigured by impact or scratching.
8. **Customer's Responsibilities**  
 8.1 The Customer shall be responsible for:  
 (a) providing access to the worksite;  
 (b) have all areas clear and clear to enable scheduled work to be completed in accordance with the schedule of installation; and  
 (c) move all existing furniture, fixtures and staples; and  
 (d) fully disclose any information that may affect SM's installation procedures (including, but not limited to, disclosing known breaks or tears in the membrane, extensions of existing slabs, thickened beams, curing compounds that may have been used, or the use of gravel or concrete toppings); and  
 (e) ensure the sub-floor is adequately ventilated and is structurally sound; and  
 (f) ensure that the levels of the sub-floor are satisfactory as the floor coverings can only be laid on a flat and level surface; and  
 (g) remove all fragile items such as glassware, crockery, pot plants, furniture and ornaments.  
 8.2 Breakages and damages are the responsibility of the Customer. All care taken but not limited to SM's responsibility accepted, SM shall be entitled to be held liable for the following:  
 (a) provide adequate dust sheets to protect the Customer's furniture and décor. SM will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by any sanding process. Flaking or crumbling walls should be temporarily covered by the Customer until the work is completed.  
 (b) extinguish all naked flames prior to coating including, but not limited to, pilot lights, heaters etc; and  
 (c) ensure that power is turned off (8 metres) of the project; and  
 (d) ensure that full and final lighting as designed for the completed project is fully operational prior to sanding works commencing, and are made available for use at no cost for the duration of the project. Any costs incurred by SM will be invoiced to the Customer should the project be interrupted by the Customer.  
 (e) make the premises available on the agreed date and time. If installation is interrupted by the failure of the Customer to adhere to the installation schedule agreed to between SM and the Customer, SM will not be held liable for any loss or damage to the Customer.  
 (f) SM is not insured to remove furniture or fittings and will not do so, nor is SM licensed to move gas or electrical appliances.
9. **Access**  
 9.1 The Customer shall ensure that SM has clear and free access to the worksite at all times to enable them to undertake the Works. SM shall not be liable for any loss or damage to the worksite (including, without limitation, damage to pathways, driveways and concrete or gravel or grassed areas) unless due to the negligence of SM.  
 9.2 SM and the Customer agree that ownership of the Materials shall not pass until:  
 (a) the Materials have been delivered to the Customer's premises; and  
 (b) the Customer has met all of its other obligations to SM.  
 9.3 Receipt by SM 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.  
 9.4 It is further agreed that until ownership of the Materials passes to the Customer in accordance with clause 10.1:  
 (a) the Customer is only a bailee of the Materials and unless the Materials have become the property of the Customer, SM shall be entitled to recover the Materials from the Customer; and  
 (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for SM, lost, damaged or destroyed; and  
 (c) the Customer shall be deemed to have accepted SM's insurance of the Materials on trust for SM, lost, damaged or destroyed; and  
 (d) the Customer shall be deemed to have accepted SM's insurance of the Materials on trust for SM, lost, damaged or destroyed; and  
 (e) the Customer shall 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 SM and must sell, dispose of or return the resulting product to SM as it so directs; and  
 (f) unless the Materials have become fixtures the Customer irrevocably authorises SM to acquire the Materials where SM believes the Materials are kept and recover possession of the Materials; and  
 (g) SM may recover possession of any Materials in transit whether or not delivery has occurred; and  
 (h) the Customer shall not charge or grant an encumbrance over the Materials nor grant otherwise give away any interest in the Materials while they remain the property of SM; and  
 (i) SM may commence proceedings to recover the Price of the Materials sold if it is found that the Customer has not passed to the Customer.
10. **Personal Property Securities Act 2009 ("PPSA")**  
 10.1 In this clause, financing statement, financing change statement, security agreement, and security interest shall have the meanings given to them in the PPSA.  
 10.2 Upon entering into 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 personal obligation of the Customer to SM which has previously been supplied and that will be supplied in the future by SM to the Customer.  
 10.3 The Customer undertakes to:  
 (a) register a financing statement and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which SM may reasonably require to:  
 (i) register a financing statement or financing change statement in relation to a security interest in the Personal Property Securities Register; and  
 (ii) register any other document required to be registered by the PPSA; or  
 (iii) correct a defect in a statement referred to in clause 11.3(a) or 11.3(a)(i);  
 (b) register 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 consent of SM;  
 (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 unless the prior consent of SM is obtained;  
 (e) immediately advise SM 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 sale; and  
 (f) SM 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.  
 10.4 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 142 and 143 of the PPSA.  
 10.5 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.  
 10.6 The Customer agrees to in writing by SM, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.  
 10.7 The Customer shall unconditionally ratify any action taken by SM under clauses 11.3 to 11.5. Subject to any express provisions to the contrary (including those contained in this clause 11), the Customer agrees that the conditions intended to have the effect of contracting out of any of the provisions of the PPSA.
11. **Security and Charge**  
 11.1 In the event of the Customer 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 obligations under clause 5).  
 11.2 The Customer indemnifies SM from and against all SM's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SM's rights under this clause.  
 11.3 The Customer irrevocably appoints SM and each director of SM as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 (including, but not limited to, executing, registering or lodging any documents, or otherwise to carry out any act necessary to perfect the Customer's security interest under this clause).  
 11.4 **Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**  
 The Customer must inspect all Materials on delivery (or the Works on completion) and must within two (2) days of delivery notify SM in writing of any evident defect/damage, shortage or other defect in the Materials/Works or failure to deliver 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 SM to inspect the Materials/Works.  
 11.5 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)  
 11.6 SM acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.  
 11.7 SM does not intend to rely on these terms and conditions or in respect of the Non-Excluded Guarantees. SM makes no warranties or other representations under these terms, conditions and conditions including but not limited to the quality or suitability of the Materials/Works. SM's liability in respect of these warranties is limited to the fullest extent permitted by law.  
 11.8 If the Customer is a consumer within the meaning of the CCA, SM's liability is limited to the extent permitted by section 64A of Schedule 2.  
 11.9 If SM is required to replace any Materials under this clause or the CCA, but is unable to do so, SM may, at its option, elect to either describe or quote the Customer must notify the Customer if SM is required to re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then SM may return any money the Customer has paid for the Works and SM shall be deemed to have provided to the Customer which were not defective. If the Customer is not a consumer within the meaning of the CCA, SM's liability for any defect or damage in the Materials is:  
 (a) limited to SM's sole discretion; and  
 (b) limited to any warranty to which SM is entitled, if SM did not manufacture the Materials; and  
 (c) limited to the extent of any express warranty or warranty card provided to the Customer by SM at SM's sole discretion.
12. **Subject to this clause 13, returns will only be accepted provided that:**  
 (a) the Customer has complied with the provisions of clause 13.1; and  
 (b) the Customer 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 reasonable.
13. **Notwithstanding clauses 13.1 to 13.3 but subject to the CCA, SM 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 the Materials; or  
 (b) the Customer using the Materials for any purpose other than that for which they were designed; and  
 (c) the Customer continuing to use any Materials after any defect became apparent or SM or the Customer has been notified of a reasonably possible defect by SM; and  
 (d) interference with the Works by the Customer or any third party without SM's prior approval; and  
 (e) the Customer failing to follow any instructions or guidelines provided by SM;  
 (f) fair wear and tear, any accident, or act of God.  
 13.1 In the case of second hand Material, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Materials before delivery and with all other relevant facts taken into account, the Customer has no warranty is given by SM as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that SM's liability in respect of second hand Materials shall be limited to the price of the second hand Materials in reliance of this clause 13.1.
14. **SM may in its absolute discretion accept non-defective Materials for return in which case SM may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Materials plus any freight costs.**
15. **Notwithstanding anything contained in this clause if SM is required by a law to accept a return of Materials which do not bear a return on the conditions imposed by that law.**
16. **Intellectual Property**  
 16.1 Where SM has designed, drawn, written plans or a schedule of Works, or created any copyrightable drawings, designs, plans, schedules and products shall remain vested in SM, and shall only be used by the Customer at SM's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of SM.  
 16.2 Where SM has used any design, drawings, designs, plans or schedule of Works or instructions given to SM will not cause SM to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify SM against any action taken by a third party claiming that the Customer has infringed any patent, registered design or trademark. The Customer agrees that SM may (at no cost) use for the purposes of Marketing or entry into any competition, any documents, designs, drawings, plans or products which SM has created for the Customer.  
 16.3 **Default and Consequences of Default**  
 16.4 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 part of a month) and such interest shall compound monthly at such a rate after as well as before any judgment.  
 16.5 If the Customer owes SM any money the Customer shall indemnify SM from and against all costs and disbursements (including legal costs) covering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SM's contract default fee, and bank dishonour fees).  
 16.6 Further to any other rights or remedies SM may have under this contract, if a Customer has not paid an invoice for the Materials or Works then the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by SM under this clause 16.5 where it can be proven that such reversal is found to be illegal under the Consumer Credit Act 2009 of the State of Victoria.  
 16.7 Without prejudice to SM's other remedies at law SM shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to SM shall, whether or not due to payment, become immediately payable to SM.  
 16.8 (a) if any money payable to SM becomes overdue, in SM'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 SM;  
 (c) the Customer has failed to attend 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 or manager (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
17. **Cancellation**  
 17.1 Without prejudice to any other remedies SM may have, if at any time the Customer is in breach of any obligation under this contract, SM may, at its discretion, terminate these terms and conditions SM may suspend or terminate the supply of Works to the Customer. SM will not be liable to the Customer for any loss or damage the Customer suffers because SM has exercised its rights under this clause 17.1.  
 17.2 SM may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time the Works are commenced by giving written notice to the Customer.  
 17.3 On giving such notice SM shall pay to the customer any sums paid in respect of the Price less any amount of any credit or debit account held by the Customer or SM as a direct result of any loss or damage whatsoever arising from such cancellation.  
 17.4 In the event that the Customer cancels the delivery of Works the Customer shall be liable for the cost of the Works cancelled, including but not limited to, any loss of profit.  
 17.5 Cancellation of orders for products made to the Customer's specifications, or for non-stockist items, will be deemed to be accepted once production has commenced, or an order has been placed.
18. **Privacy Act 1988**  
 18.1 The Customer agrees for SM to obtain from a credit reporting body (CRB) a credit report on the Customer under the Privacy Act 1988 (Cth) (the "CRB report") for the purpose of previous credit applications, credit history) about the Customer in relation to credit provided by SM.  
 18.2 The Customer agrees that SM may exchange information about the Customer with those entities or persons who are necessary to carry out 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; and  
 (d) to contact the Customer with other credit providers; and/or  
 (e) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.  
 18.3 The Customer agrees that SM may be given a consumer credit report to collect overdue payment on commercial credit.  
 18.4 The Customer agrees that personal credit information provided may be used and retained by SM for the purpose of credit reporting and for other agreed purposes or required by:  
 (a) the provision of Works; and  
 (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Works; and/or  
 (c) the Customer's compliance with SM's 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.  
 18.5 The Customer agrees that the Customer authorises SM to apply for a credit report on the Customer to obtain a consumer credit report 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.  
 18.6 The information given to the CRB may include:  
 (a) personal information as outlined in 17.1 above;  
 (b) name of the credit provider and that SM is a current credit provider to the Customer;  
 (c) the status of the Customer's credit account; and  
 (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) details concerning the Customer's credit history, including any 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 debit recovery action commenced or alternatively payment of the amount due to SM has been delayed for more than sixty (60) days; and  
 (g) information that, in the opinion of SM, the Customer has committed a serious credit breach; and  
 (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).  
 18.7 The Customer shall have the right to request (by e-mail) from SM:  
 (a) a copy of the information that SM has obtained from the CRB; and the right to request that SM correct any incorrect information; and  
 (b) that SM does not disclose any personal information about the Customer for the purpose of marketing.  
 18.8 SM 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.  
 18.9 If the Customer is not satisfied with the information SM provides by e-mail, SM 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 decision, the Customer may make a complaint to the Information Commissioner at www.oac.gov.au.  
 18.10 **Building and Construction Industry Security of Payment Act 2002**  
 SM's sole discretion if there are any disputes or claims for payment under Materials and/or Works A/C's of the Customer under the Building and Construction Industry Security of Payment Act 2002 may apply.  
 18.11 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.
19. **Service of Notices**  
 19.1 Notices 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; or  
 (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 email address of the other party as stated in this contract.  
 19.2 Any notice that is posted shall be deemed to have been served, unless the Customer is shown, at the time when by the ordinary course of post, the notice would have been delivered.
20. **Trusts**  
 20.1 If the Customer at any time upon or subsequent to entering into the contract is acting in the capacity of trustee of any trust ("Trust"), then whether or not SM may have notice of the Trust, the Customer covenants with SM as follows:  
 (a) the contract entered into with SM for the purpose of indemnifying the Customer now or subsequently may have against the Trust and its 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 agrees to not release the right of indemnity or commit any breach of trust or be a party to any other act which might prejudice that right of indemnity;  
 (c) the Customer shall not enter into any contract with SM (SM 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) the variation of the Trust or the trust fund; or  
 (iii) any advancement or distribution of capital of the Trust; or  
 (iv) any resettlement of the trust property.
21. **General**  
 21.1 The law by which 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 for any reason, the validity, enforceability, coplity and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.  
 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the State in which SM has its principal place of business, and are subject to the jurisdiction of the Courts of the State of Victoria.  
 21.3 Subject to clause 13, SM shall have no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer as a result of SM's liability in respect of the Materials/Works supplied by SM under this contract.  
 21.4 SM's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works.  
 21.5 SM may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.  
 21.6 The Customer cannot licence or assign without the written approval of SM.  
 21.7 SM may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligations under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of SM's sub-contractors without the authority of SM.  
 21.8 Where the Customer or SM may amend these terms and conditions by notifying 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 SM to provide Works to the Customer.  
 21.9 The Customer agrees that SM may be liable for any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.  
 21.10 The 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.

Please note that a larger print version of these terms and conditions is available from SM on request.