

Definitions

•"Company" shall mean Damian Limburg trading as Complete Balustrading, ABN: 26 165 070 010
•"Customer" shall mean the Customer or any person acting on behalf of and with the authority of the Customer.
•"Works" shall mean all Works (including the supply of Materials) undertaken by the Company and described in this contract and includes any advice or recommendations.
•"Goods" Shall have the same meaning as Works.
•"Materials" shall mean all Materials required completing the Works and all materials installed or otherwise included as part of the Works.
•"Price" shall mean the Price of the Works as agreed between the Company and the Customer.

2. Acceptance

•Any instructions received by the Company from the Customer for the supply of Works and/or the Customer's acceptance of Works undertaken by the Company or otherwise before issuing further instructions to, or having further dealings with, or accepting further works from, the Company (whichever is the sooner), shall constitute acceptance of the terms and conditions contained herein and these terms and conditions shall become binding on the Customer.
•Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
•Upon acceptance of these terms and conditions by the Customer, the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the Company.
•None of the Company's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Company in writing nor is the Company bound by any such unauthorised statements unless they are ratified by the manager of the Company in writing.

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

3. Personal Property Securities Act 2009 (PPSA)

•The Customer consents to the Company effecting a registration on the PPSA register (in any manner the Company deems appropriate) in relation to any security interest arising under or in connection with or contemplated by these terms.

•The Customer waives its right to receive notice of a verification statement in relation to any registration by the Company on the register.

•The Customer agrees to promptly execute any documents, provide all relevant information, fully cooperate with the Company and do any other act or thing that the Company requires to ensure that the Company has a perfected security interest in, and has priority over any other security interests in, the Goods or otherwise.

•The Customer agrees that, until all monies owing to the Company are paid in full, it shall not sell or grant any other Security Interest in the Goods.

•The Customer will not register a financing change statement in respect of the security interest without the Company's prior written consent.

•The Customer agrees that the Company may, at its absolute discretion, apply any amounts received from the Customer towards amounts owing to the Company in such orders as the Company may determine.

•If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with these terms, the Customer agrees that the following provisions of the PPSA will not apply to the enforcement of these terms: section 95 (notice of removal of accession), to the extent that it requires the Company to give notice to the Customer; section 96 (when a person with an interest in the whole may retain an accession); subsection 121(4) (enforcement of liquid assets – notice to grantor); section 125 (obligation to dispose of or retain collateral). Section 130 (notice of disposal), to the extent that it requires the Company to give a notice to the Customer; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); subsection 132(1) (retention of collateral); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).

•Notices or documents required of permitted to be given to the Company for the purposes of the PPSA must be given in accordance with the PPSA.

•The Company agrees with the Customer not to disclose information of the kind mention in subsection 275(1) of the PPSA except in circumstances required by paragraphs 275(7)(b)-(2).

•The Customer agrees to reimburse, upon demand, the Company for all costs and/or expenses incurred or payable by the Company in relation to registering or maintaining any financing statement, releasing in whole or in part the Company's security interest or any other document in respect of any security interest.

•In these terms the following words have the respective meanings given to them in the PPSA: commingled, financing statement, financing change statement, perfected, proceedings, register, registration, security interest and verification statement.

4. Variations

•In the event that the Customer requests a Variation all such requests shall be made in writing, although in any case where the Customer requests a variation orally and the Company agrees to same and completes the additional work or any part thereof, the Customer may be charged by the Company for the work completed at a rate of actual cost plus 20% or such other price as was agreed.

•In the event that the Company requests a Variation, the Company will, in writing: -state the reason for the Variation; and

-provide a full description of the Variation; and
-state any effect the Variation will have on the contract, including but not limited to, the Price, completion date and whether further permits or authorisations are required.

•Other than for the events outlined in clause 4 the Company shall obtain written acceptance by the Customer of any variation submitted by the Company before commencing Work on the variation.

•In the event of: -unforeseeable problems with the site which are only revealed when undertaking the Works which the Company considers should be immediately rectified for the safe completion of the Works; or

-the Company being instructed to undertake extra Works by any person authorised by the Building Act 1993;

then the Company may carry out any Works needed to fix any such problem/s or carry out any such instructions. Any such additional Works necessary are to be treated as a Variation. However if a Price is not agreed upon then the Customer will be charged at the Company's actual cost plus twenty percent (20%) for the Works.

5. Price And Payment

•At the Company's sole discretion a deposit may be required.

•At the Company's sole discretion: -payment shall be due on delivery of the Works; or
-payment shall be due before delivery of the Works.

•The Company shall charge a call out fee where an appointment has been booked for measuring or installation and are unable to commence work due to site readiness or lack of accessibility. This does not apply to appointments affected by weather.

•The Company may submit a detailed payment claim at intervals determined by the Company in its sole discretion for work performed up until the expiry of an interval. The value of work so performed shall include the reasonable value of authorised Variations, whether or not the value of such Variations has been finally agreed between the parties, and the value of materials delivered to the site but not installed.

•Time for payment for the Works shall be of the essence and will be stated on the invoice. If no time is stated then payment shall be due on the date of the invoice.

•Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two percent (2.0%) of the Price) or by direct credit, or by any other method as agreed to between the Customer and the Company.

•The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in the building contract schedule.

•In the event of any minor Works still to be completed by the Company, the Customer may (at the Company's sole discretion) withhold payment, the amount equal to the value of the Works still to be completed by the Company.

6. Delivery Of Works

•Subject to clause 2 it is the Company's responsibility to ensure that the Works start as soon as it is reasonably possible.

•The Works commencement date will be put back and the building period extended by whatever time is reasonable for variations and delays by any event beyond the Company's control, including but not limited to any direction given to the Company by the Customer to delay any part of the Works, or the failure by the Customer to: -pay the deposit required at clause 5.1; or

-pay progress payments required at clause 5.4; or

-pay any other outstanding invoices; or

-notify the Company that the site is ready; or

-have the site ready for initial trade measure; or

-have the site ready for installation; or

-ensure structural adequacy of the as per clause 10.1; or

-make a selection.

•The Works shall be deemed to be completed when: -the Works carried out under this contract have been completed in accordance with the plans and specifications set out in this contract; or

-in the event that the building permit is obtained by the Company, the Company obtains either: ■a copy of the occupancy permit under the Building Act 1993, if the building permit for the Works requires the issue of an occupancy permit; or

■a copy of the certificate of final inspection.

•The Company reserves the right to withhold any certification required by the Customer at the completion of the Works until all Payments have been made.

•The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.

•The Company shall not be liable for any loss or damage whatever due to failure by the Company to deliver the Works (or any of them) promptly or at all.

7. Customer's Responsibility

•It is the intention of the Company and agreed by the Customer that: -any building/construction sites will comply with all Victorian occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation; and

-the Company is not responsible for the removal of rubbish from or clean up of the building/construction site/s. This is the responsibility of the Customer or the Customer's agent.

8. Risk

•All risk for the Materials passes to the Customer on completion, even if Ownership of any Materials remains vested in the Company under Clause 11 below.

•Whilst all due care will be taken by the Company, no liability will be accepted by the Company for any damage occurring during the Works, including, but not limited to, broken tiles, damaged render, or penetration of water proofing membrane.

•Any advice, recommendation, information, assistance or service provided by the Company in relation to the Works supplied is given in good faith and shall be accepted without liability on the part of the Company and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Works.

9. Surplus Materials

•Unless otherwise stated elsewhere in this contract; -only suitable new Materials will be used;

-demolished Materials remain the Customer's property; and

-Materials which the Company brings to the site which are surplus remain the property of the Company.

10. Structural Requirement

•All effort is made by the Company to detect any existing structural deficiencies at the Customer's work site at the time of quoting. However, at the installation stage further structural supports may be needed to enable the Company to deliver the Works. It is the responsibility of the Customer at the Customer's cost to ensure that there are adequate structural fixing points where required. The Company reserves the right to determine the final installation method, as may be structurally necessary but takes no responsibility for the structural adequacy of the fixing surface. Structural adequacy of the fixing surface should be confirmed by the Customer utilising the Customer's building designer or engineer.

11. Retention of Title

•Title in all collateral (goods) supplied to the Customer by the Company, both in the present and in the future, including the goods and proceeds thereof, shall remain in the Company, until all monies owing to the Company by the Customer, together with all collection, repossession and / or legal costs incurred have been paid in full.

•In the event of a breach of Clause 4 hereof, the Company shall be entitled to enter upon the Premise of the Customer for the purpose of removing all goods of the Company pursuant to the Company's security interest and Purchase Money Security Interest in the goods.

•The Customer acknowledges that it is in possession of all goods as bailee for the Company until payment for all goods has been made by the Customer to the Company.

•Where the collateral is delivered to the Customer or other Third Party, the Company has a security interest in the goods within the meaning of the Personal Properties Securities Act 2009 ("The Act").

•The Customer acknowledges that where the Collateral has been installed in the premises of a Third Party and the goods have become commingled, the Company has a 'Purchase Money Security Interest' in the proceeds of such goods, within the meaning of the Act.

12. Warranty

•In relation to the goods where the price is less than \$40,000: the company acknowledges that the goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for major failure and for compensation for any other reasonable foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

•To the extent required by statute and subject to clause 12.4 and 12.5, the Company warrants that: ■the Works shall be carried out in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract schedule;

■all Materials supplied be good and, having regard to the relevant criteria, suitable for the purpose for which they are used and that, unless otherwise stated in this contract, those Materials will be new;

■the Works will be carried out in accordance with all relevant laws and legal requirements (including, but not limited to, the Building Act 1993);

■the Works will be carried out in an appropriate and skilful way, with reasonable skill and care;

■if the Works consists of the construction of a detached dwelling or are intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, that the detached dwelling or home will be suitable for occupation when the Works are finished; and

■if the contract states the particular purpose for which the Works are required, or the result which the Customer wishes the Works to achieve (so as to show that the Customer relies on the Company's skill and judgment) then the Works and any Materials will be reasonably fit for that purpose or will be of such a nature and quality that they might reasonably be expected to achieve that result.

•Furthermore and in conjunction with the warranty required by the statute and subject to clause 12.4, 12.5 and 12.6 the company warrants to a maximum of seven years from the anniversary of the completion of the works, any work directly manufactured by the company against faulty workmanship or product failure.

•The conditions applicable to the warranty stated in clause 12.1, 12.2 and 12.3 are: -the warranty shall not cover any defect or damage to, or which may be caused or partly caused by or arise through: ■the subsidence or movement of land and structures in which the Works have been installed;

■glass breakage; other than that stated in clause 12.6

■tarnishing of stainless steel;

■items listed at clause 9;

■faulty or improper installation by an outside party;

■failure on the part of the Customer to properly maintain Works; or

■failure on the part of the Customer to follow any instructions or guidelines provided by the Company; or

■any use of the Works otherwise than for any application specified on a quote or order form; or

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- the continued use of the Works after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- fair wear and tear, any accident or act of God.

•the warranty shall cease and the Company shall thereafter in no circumstances be liable under the terms of the warranty if the customer defaults in payment of any invoice or if the workmanship is repaired, altered or overhauled without the Company's consent.

- For Material not manufactured by the Company the warranty shall be the current warranty provided by the manufacturer of the Material. The Company shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturers warranty.
- Spontaneous fracture in toughened glass is caused by nickel sulphide (NiS) inclusions formed during manufacture of glass. As it is difficult to ascertain whether a breakage is due to this rare natural phenomena the glass is only covered for a maximum of 90 days after installation.

13.Warranty claims

- All claims must be made in writing, include proof of purchase to the address' detailed at clause 1.1 within seven days of any defect or failure becoming apparent. As the Works are generally in situ, a Company representative will within seven days of notice of any defect or failure inspect the failure to determine the best course of action to provide a remedy. Other than as provided by law the Company will repair or replace the product to the extent that is functionally equivalent to the product supplied.

- Where a product has been repaired or replaced this warranty shall apply to the repair or replaced product for the balance of the period provided by this warranty.

14.The Competition and Consumer Act 2010, Building Act 1993, and Fair Trading Acts

- Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010, Building Act 1993, or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

15.Intellectual Property

- Where the Company has designed, drawn or written plans or a schedule of Works for the Customer, then the copyright in those plans, schedules, designs and drawings shall remain vested in the Company, and shall only be used by the Customer at the Company's discretion.

- The Customer warrants that all designs or instructions to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Customer's order.

16.Default & Consequences of Default

- Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.

- If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.

- Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) the Company may suspend or terminate the supply of Works to the Customer under the Building and Construction Industry Security of Payments Act 2002. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercised its rights under this clause.

- If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.

- Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unperformed and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:

- any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
- the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

17.Cancellation

- The Company may cancel any contract to which these terms and conditions apply or cancel delivery of Materials at any time before the Materials are delivered by giving written notice to the Customer. On giving such notice the Company shall repay to the Customer any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatever arising from such cancellation.

- In the event that the Customer cancels delivery of Materials the Customer shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.

18.Privacy Act 1988

- The Customer agrees for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Company.

- The Customer agrees that the Company may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- to assess an application by Customer; and/or
- to notify other credit providers of a default by the Customer; and/or
- to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- to assess the credit worthiness of Customer.

- The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

- The Customer agrees that personal credit information provided may be used and retained by the Company for the following purposes and for other purposes as shall be agreed between the Customer and Company or required by law from time to time:

- provision of Works; and/or
- marketing of Works by the Company, its agents or distributors in relation to the Works; and/or
- analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Works; and/or
- processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
- enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Works.

- The Company may give information about the Customer to a credit reporting agency for the following purposes:

- to obtain a consumer credit report about the Customer; and/or
- allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

- 19.Building and Construction Industry Security of Payments Act 2002 and the Building Act 1993
- At the Company's sole discretion, if there any disputes or claims for unpaid Work then the provisions of the Building and Construction Industry Security of Payment may apply.

- 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 2002 of Victoria, except to the extent permitted by the Act where applicable.

20.General

- 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.

- These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.

- The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Company.

- The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

- The Company reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Customer of such change.

- Neither party shall be liable for any default due to any act of God, war, terrorism, fire, flood, drought, storm or other event beyond the reasonable control of either party.

- The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision.