

# Licensed To Chill Air Conditioning Australia Pty Ltd – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "L2C" means Licensed To Chill Air Conditioning Australia Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Licensed To Chill Air Conditioning Australia Pty Ltd.
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting L2C to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
  - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Works" means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by L2C to the Client at the Client'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 L2C and the Client in accordance with clause 6 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**
- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places a company purchase order or letter of acceptance for any Works.
- 2.2 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 L2C.
- 2.3 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.
3. **Errors and Omissions**
- 3.1 The Client acknowledges and accepts that L2C shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
  - (a) resulting from an inadvertent mistake made by L2C 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 L2C in respect of the Works.
- 3.2 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 willful misconduct of L2C; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.
4. **Change in Control**
- 4.1 The Client shall give L2C 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 of trustees or business practice). The Client shall be liable for any loss incurred by L2C as a result of the Client's failure to comply with this clause.
5. **Quotations**
- 5.1 Unless otherwise specified, the following notes apply to the quotation, that:
  - (a) site allowances with the exception of the current Enterprise Bargaining Agreements (EBA) are excluded;
  - (b) quoted hours are based on a standard working week of thirty-eight (38) hours with no allowance for out of normal hours work provided for;
  - (c) whilst L2C have endeavoured to provide a complying quotation, the Client acknowledges and accepts that some items may deviate from the specification. These deviations will be discussed with the client before proceeding.
  - (d) the work site will be certified to be asbestos free prior to L2C commencing work. Should however, L2C discover asbestos or other hazardous material during the performance of the Works, then all associated costs resulting from any suspension of work or other costs or changes shall be the responsibility of the Client. At no time shall L2C handle the removal of asbestos and/or other hazardous material;
- 5.2 In addition to clause 5.1, the following exclusions shall apply to the quotation:
  - (a) patching of ceilings or painting;
  - (b) any application of the Building Code of Australia ("BCA") update, 01 May 2006 for Energy Provisions.
- 5.3 The following assumptions have been used in preparing the quotation:
  - (a) L2C have allowed for R1.0 rated and tested polyester type insulation within the ductwork wall;
6. **Price and Payment**
- 6.1 At L2C's sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by L2C to the Client in respect of Works performed or Materials supplied; or
  - (b) L2C's quoted Price (subject to clause 6.2) which shall be binding upon L2C provided that the Client shall accept L2C's quotation in writing within thirty (30) days.
- 6.2 L2C reserves the right to change the Price:
  - (a) if a variation to the Materials which are to be supplied is requested; or
  - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, obscured building defects, unforeseen component failure, change of design, delays, hidden pipes and wiring in walls, floors and ceiling cavities etc.) which are only discovered on commencement of the Works; or
  - (d) in the event of increases to L2C in the cost of labour or materials which are beyond L2C's control.
- 6.3 Variations will be charged for on the basis of L2C's quotation, and will be detailed in writing, and shown as variations on L2C's invoice. The Client shall be required to respond to any variation submitted by L2C within ten (10) working days. Failure to do so will entitle L2C to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At L2C's sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by L2C, which may be:
  - (a) on completion of the Works; or
  - (b) by way of progress payments in accordance with L2C'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) thirty (30) days following the date of any invoice given to the Client;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by L2C.
- 6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and L2C.
- 6.7 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 L2C nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to L2C an amount equal to any GST L2C must pay for any supply by L2C under this or any other contract for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. 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.
7. **Provision of the Works**
- 7.1 Subject to clause 7.2 it is L2C's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that L2C claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond L2C's control, including but not limited to any failure by the Client to:
  - (a) make a selection; or
  - (b) have the site ready for the Works; or
  - (c) notify L2C that the site is ready.
- 7.3 At L2C's sole discretion, the cost of delivery is included in the Price.
- 7.4 L2C 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.
- 7.5 Any time specified by L2C for delivery of the Works is an estimate only and L2C 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. In the event that L2C is unable to supply the Works as agreed solely due to any action or inaction of the Client, then L2C 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.
8. **Risk**
- 8.1 If L2C retains ownership of the Materials under clause 13 then:
  - (a) where L2C is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client 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 Client or the Client's nominated carrier takes possession of the Materials at L2C's address; or
    - (ii) the Materials are delivered by L2C or L2C's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
  - (b) where L2C is to both supply and install Materials then L2C shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests L2C to leave Materials outside L2C'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 Client and it shall be the Client'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 Client's expense.
- 8.3 L2C shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, L2C accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.4 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Act, Regulations and Code of Practice. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 8.5 Whilst the final location of the condensing unit is at the discretion of the Client, a charge will apply as a variation as per clause 6.2, if the Client requests the unit to be located in a different location than what was initially quoted
- 8.6 L2C shall upon installation ensure that all installed Materials meet current industry standards applicable to noise levels, however L2C cannot guarantee that noise levels will remain constant post installation as the Materials may be impacted by many factors such as the weather, lack of maintenance, tampering etc.
- 8.7 In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Client shall be responsible for any and all costs involved.
- 8.8 The Client acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- 8.9 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify L2C immediately upon any proposed changes. The Client agrees to indemnify L2C against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.2.
- 8.10 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, cabling, etc.) are of suitable capacity to handle the Materials once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing, crawl spaces or inspection points), L2C reasonably forms the opinion that the Client's premises is not safe for the installation of Materials to proceed then L2C shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 7.2 above) until L2C is satisfied that it is safe for the installation to proceed.
- 8.11 Where the Client has supplied materials for L2C to complete the Works, the Client acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. L2C shall not be responsible for any defects in the materials, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 8.12 The Client acknowledges that L2C is only responsible for parts that are replaced by L2C. L2C will not be liable for other parts/materials which subsequently fail.
- 8.13 The Client acknowledges and agrees that where L2C has performed temporary repairs that:
  - (a) L2C offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
  - (b) L2C will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair.
- 8.14 The Client 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) mark or stain if exposed to certain substances; and
  - (d) be damaged or disfigured by impact or scratching.
- (e) Ductwork will be manufactured and installed in accordance with AS 4254. The final ductwork layout sizing and rationalisation will be licensed to L2C's standards and design.
9. **Client's Acknowledgements and Obligations**
- 9.1 The Client acknowledges and accepts:
  - (a) that all financial obligations under this contract shall be required to be settled in full for the goods to be classified as owned by the client
- (b) L2C has allowed for the removal of trade rubbish, debris, material, cutting and other redundant materials due to works completed by L2C
- (c) Any trade rubbish, debris, material, cutting and other redundant materials from works not related to L2C shall be the Client's responsibility and expense to dispose of
- 9.2 It shall be the Client's responsibility to:
  - (a) provide free and adequate services, including power, water and light conforming to the standards of local authorities and WHS requirements during the provision of the Works, including, but not limited to, any commissioning, testing and subsequent operations; and
  - (b) provide adequate sanitary conveniences and all necessary parking and statutory amenities for L2C's staff as required under applicable industrial Agreements. Any space for a temporary storage area shall be provided free of charge, within acceptable distances of the site work areas;
10. **Product Specifications**
- 10.1 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in L2C's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by L2C.
11. **Access**
- 11.1 The Client shall ensure that L2C has clear and free access to the site at all times to enable them to deliver and/or install the Materials. L2C shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of L2C.
- 11.2 The Client acknowledges and accepts that during the Works, ceiling tiles and access panels may need to be removed and replaced by others at no cost to L2C. This will be itemised in the quotation or correspondence between L2C and the Client if required.
12. **Compliance with Laws**
- 12.1 The Client and L2C shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 12.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works, unless expressly agreed otherwise between L2C and the Client.
- 12.3 The Client agrees that the site will comply with any work health and safety (WHS) laws and any other relevant safety standards or legislation.
13. **Title**
- 13.1 L2C and the Client agree that ownership of the Materials shall not pass until:
  - (a) the Client has paid L2C all amounts owing to L2C; and
  - (b) the Client has met all of its other obligations to L2C.
- 13.2 Receipt by L2C 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.
- 13.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 13.1:
  - (a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to L2C on request.
  - (b) unless the Materials have become fixtures the Client irrevocably authorises L2C to enter any premises where L2C believes the Materials are kept and recover possession of the Materials.
  - (c) L2C may recover possession of any Materials in transit whether or not delivery has occurred.
  - (d) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of L2C.
  - (e) L2C may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
14. **Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 14.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within fourteen (14) days of delivery notify L2C in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client 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 Client must allow L2C to inspect the Materials or to review the Works provided.
- 14.2 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**).

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- 14.3 L2C acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, L2C makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. L2C's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Client is a consumer within the meaning of the CCA, L2C's liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If L2C is required to replace any Materials under this clause or the CCA, but is unable to do so, L2C may refund any money the Client has paid for the Materials.
- 14.7 If L2C 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 L2C 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 and Materials which have been provided to the Client which were not defective.
- 14.8 If the Client is not a consumer within the meaning of the CCA, L2C's liability for any defect or damage in the Materials is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by L2C at L2C's sole discretion;
  - (b) limited to any warranty to which L2C is entitled, if L2C did not manufacture the Materials;
  - (c) otherwise negated absolutely.
- 14.9 Subject to this clause 14, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 14.1; and
  - (b) L2C has agreed that the Materials are defective; and
  - (c) the Materials are returned within a reasonable time at the Client'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 possible.
- 14.10 Notwithstanding clauses 14.1 to 14.9 but subject to the CCA, L2C 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 Client failing to properly maintain or store any Materials;
  - (b) the Client using the Materials for any purpose other than that for which they were designed;
  - (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) interference with the Works by the Client or any third party without L2C's prior approval;
  - (e) the Client failing to follow any instructions or guidelines provided by L2C;
  - (f) fair wear and tear, any accident, or act of God.
- 14.11 L2C may in its absolute discretion accept non-defective Materials for return in which case L2C may require the Client to pay handling fees of up to twenty-five percent (25%) of the value of the returned Materials plus any freight costs.
- 14.12 Notwithstanding anything contained in this clause if L2C is required by a law to accept a return then L2C will only accept a return on the conditions imposed by that law.
- 15. Intellectual Property**
- 15.1 Where L2C has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in L2C, and shall only be used by the Client at L2C's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of L2C.
- 15.2 The Client warrants that all designs, specifications or instructions given to L2C will not cause L2C to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify L2C against any action taken by a third party against L2C in respect of any such infringement.
- 15.3 The Client agrees that L2C may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which L2C has created for the Client.
- 16. Default and Consequences of Default**
- 16.1 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 at L2C's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes L2C any money the Client shall indemnify L2C from and against all costs and disbursements incurred by L2C in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, L2C's contract default fee, and bank dishonour fees).
- 16.3 Further to any other rights or remedies L2C may have under this contract, if a Client has made payment to L2C, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by L2C under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 16.4 Without prejudice to L2C's other remedies at law L2C shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to L2C shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to L2C becomes overdue, or in L2C's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by L2C;
  - (c) the Client becomes insolvent or bankrupt, 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
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 17. Cancellation**
- 17.1 Without prejudice to any other remedies L2C may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions L2C may suspend or terminate the supply of Works to the Client. L2C will not be liable to the Client for any loss or damage the Client suffers because L2C has exercised its rights under this clause.
- 17.2 L2C may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice L2C shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to L2C for Works already performed. L2C shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by L2C as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 17.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 18. Privacy Act 1988**
- 18.1 The Client agrees for L2C to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by L2C.
- 18.2 The Client agrees that L2C may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 18.3 The Client consents to L2C being given a consumer credit report to collect overdue payment on commercial credit.
- 18.4 The Client agrees that personal credit information provided may be used and retained by L2C for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or
  - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Works.
- 18.5 L2C may give information about the Client to a CRB 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 Client including credit history.
- 18.6 The information given to the CRB may include:
- (a) personal information as outlined in 18.1 above;
  - (b) name of the credit provider and that L2C is a current credit provider to the Client;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan 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 debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and L2C has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of L2C, the Client has committed a serious credit infringement;
- (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.7 The Client shall have the right to request (by e-mail) from L2C:
- (a) a copy of the information about the Client retained by L2C and the right to request that L2C correct any incorrect information; and
  - (b) that L2C does not disclose any personal information about the Client for the purpose of direct marketing.
- 18.8 L2C will destroy personal information upon the Client'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 The Client can make a privacy complaint by contacting L2C via e-mail. L2C 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 Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 19. Building and Construction Industry Security of Payments Act 1999**
- 19.1 At L2C'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 1999 may apply.
- 19.2 Nothing in this contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.
- 20. Service of Notices**
- 20.1 Any written notice 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;
  - (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 other party's last known email address.
- 20.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 21. Trusts**
- 21.1 If the Client 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 L2C may have notice of the Trust, the Client covenants with L2C as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - (b) the Client 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 Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
  - (c) the Client will not without consent in writing of L2C (L2C will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.
- 22. General**
- 22.1 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.
- 22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which L2C has its principal place of business, and are subject to the jurisdiction of the Hornsby Courts in New South Wales.
- 22.3 Subject to clause 14, L2C 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 L2C of these terms and conditions (alternatively L2C's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 22.4 L2C may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 22.5 The Client cannot licence or assign without the written approval of L2C.
- 22.6 L2C 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 L2C's sub-contractors without the authority of L2C.
- 22.7 The Client agrees that L2C 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 L2C to provide Works to the Client.
- 22.8 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.
- 22.9 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.