

TERMS AND CONDITIONS OF TRADE

- 1. Definitions**
- 1.1 I.C.M. means I.C.M. Construction (QLD) Pty Ltd, ABN 24 393 849 214, its successors and assigns or any person acting on behalf of and with the authority of I.C.M. Construction (QLD) Pty Ltd.
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting I.C.M. to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- if there is more than one Client, is a reference to each Client jointly and severally; and
 - if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, Client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.4 "Goods" means all Goods or Services supplied by I.C.M. to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between I.C.M. and the Client in accordance with clause 5 below.
- 1.6 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999".
- 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 an order for or accepts delivery of the Goods.
- 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 I.C.M..
- 2.3 Any advice, recommendation, information, assistance or service provided by I.C.M. in relation to Goods and Services supplied is given in good faith, is based on I.C.M.'s own knowledge and experience and shall be accepted without liability on the part of I.C.M. and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services
- 2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with I.C.M. and it has been approved with a credit limit established for the account.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 3. Pricing**
- 3.1 Prices quoted for the supply of goods and services exclude GST and any other taxes or duties imposed on or in relation to the goods and services. Any such GST and other taxes or duties are additionally at the Client's account.
- 3.2 At I.C.M.'s sole discretion, the Price shall be either:
- as indicated on any invoice provided by I.C.M. to the Client; or
 - I.C.M.'s quoted price (subject to clause 3.3) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 3.3 If the Client requests any variation to the Agreement, I.C.M. may increase the price to account for the variation.
- 3.4 Where there is any change in the costs incurred by I.C.M. in relation to goods or services, I.C.M. may vary its price to take into account of any such change, by notifying the Client.
- 3.5 At I.C.M.'s sole discretion, a non-refundable deposit may be required.
- 4. Payment**
- 4.1 The time for payment for the Goods is of the essence.
- 4.2 The Price will be payable by the Client on the date/s determined by I.C.M., which may be:
- on completion of the services;
 - by way of installments/progress payments in accordance with I.C.M.'s payment schedule;
 - the date specified on any invoice or other form as being the date for payment; or
 - within thirty (30) days in which a statement is posted to the Buyer's address or address for notices;
 - failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by I.C.M..
- 4.3 Payment may be made by electronic/on-line banking, cheque, credit card or by any other method as agreed to between the Client and I.C.M..
- 4.4 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 I.C.M. nor to withhold payment of any invoice because part of that invoice is in dispute.
- 4.5 Prices quoted for supply of goods & services exclude GST and any other taxes or duties imposed on or in relation to the goods & services. In addition to the Price the Client must pay to I.C.M. an amount equal to any GST I.C.M. must pay for any supply by I.C.M. under this or any other contract for the sale of the Goods. 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.
- 4.6 Payment terms may be revoked or amended at I.C.M.'s sole discretion, immediately upon giving the Client written notice.
- 5. Delivery of Goods and/or Services**
- 5.1 Delivery ("Delivery") of the Goods and/or Services is taken to occur at the time that I.C.M. (or I.C.M.'s nominated carrier) delivers the Goods and/or Services to the Client's nominated address even if the Client is not present at the address.
- 5.2 At I.C.M.'s sole discretion, the cost of delivery is included in the Price.
- 5.3 I.C.M. may deliver the Goods and/or Services in separate installments. Each separate installment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.4 Any time specified by I.C.M. for delivery of the Goods and/or Services is an estimate only and I.C.M. 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 attempt to enable the Goods and/or Services to be delivered at the time and place as was arranged between both parties. In the event that I.C.M. is unable to supply the Goods and/or Services as agreed solely due to any action or inaction of the Client, then I.C.M. shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7. Collateral & Assignment**
- 7.1 The Client hereby charges all its right, title and interest in the property or properties referred to in the Client's Credit Application and also any property or properties that it owns currently or may acquire in the future solely or jointly or have or become to have a beneficial interest in, in favour of I.C.M., with the due and punctual observance and performance of all the obligations of the Client. The Client indemnifies I.C.M. against all expenses and legal costs (on a solicitor/own Client basis) for preparing, loading and removing any caveat.
- 7.2 The Client hereby acknowledges that I.C.M. may at its discretion register and lodge a caveat(s) on such property or Properties in respect of the interests conferred on it under clause 7.1. Such registration of a caveat by I.C.M. over the Client's property or Properties must not be challenged by the Client in any way whatsoever, and the Client agrees not to take any steps in filing a "lapsing notice" via the Land Titles Office to have the caveat removed, until such time that the Client has paid all monies owing by it to I.C.M. as claimed from time to time.
- 8. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 8.1 The Client must inspect the goods or services on delivery and must within seven (7) days of delivery notify I.C.M. 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 goods or services as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow I.C.M. to inspect the goods or services.
- 8.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 8.3 I.C.M. acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 8.4 If the Client is a consumer within the meaning of the CCA, I.C.M.'s liability is limited to the extent permitted by section 64A of Schedule 2.
- 8.5 If I.C.M. is required to replace the Goods under this clause or the CCA, but is unable to do so, I.C.M. may refund any money the Client has paid for the Goods.
- 8.6 Subject to this clause 8.8, returns will only be accepted provided that:
- the Client has complied with the provisions of clause 8.1; and
 - I.C.M. has agreed that the goods or services are defective; and
 - the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 8.7 I.C.M. may in its absolute discretion accept non-defective Goods for return in which case I.C.M. may require the Client to pay handling fees of up to twenty-five percent (25%) of the value of the returned Goods plus any freight costs.
- 8.8 Notwithstanding anything contained in this clause if I.C.M. is required by a law to accept a return then I.C.M. will only accept a return on the conditions imposed by that law.
- 8.9 Subject to clause 8.1, customised, or non-stock list items or Incidental Items made or ordered to the Client's specifications are not acceptable for credit or return.
- 9. Default and Consequences of Default**
- 9.1 If the Client defaults in payment by the due date of any amount payable to I.C.M., then all money which would become payable by the Client to I.C.M. at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Client, and I.C.M. may, without prejudice to any of its other accrued or contingent rights:
- 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 I.C.M.'s sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment;
 - charge the Client a late payment administration fee equal to 10% of the invoice to a maximum of \$200 plus GST;
 - charge the Client for, and the Client must indemnify I.C.M. from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;
 - cease or suspend supply of any further goods or services to the Client
 - by written notice to the Client, terminate any uncompleted contract with the Client.
- 9.2 Clauses 9.1(d) and 9.1(e) may also be relied upon, at IEs option:
- where the Client is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
 - where the Client is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the View to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Client.
- 10. Title**
- 10.1 I.C.M. and the Client agree that ownership of the Goods shall not pass until:
- the Client has paid I.C.M. all amounts owing to I.C.M.; and
 - the Client has met all of its other obligations to I.C.M..
- 10.2 Receipt by I.C.M. 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.
- 10.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 10.1
- the Client is only a bailee of the Goods and must return the Goods to I.C.M. on request.
 - the Client holds the benefit of the Client's insurance of the Goods on trust for I.C.M. and must pay to I.C.M. the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for I.C.M. and must pay or deliver the proceeds to I.C.M. on demand.
 - the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of I.C.M. and must sell, dispose of or return the resulting product to I.C.M. as it so directs.
 - the Client irrevocably authorises I.C.M. to enter any premises where I.C.M. believes the Goods are kept and recover possession of the Goods.
 - I.C.M. may recover possession of any Goods in transit whether or not delivery has occurred.
 - the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of I.C.M..
 - I.C.M. may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 11. Cancellation**
- 11.1 Without prejudice to any other remedies I.C.M. may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions I.C.M. may suspend or terminate the supply of Goods to the Client. I.C.M. will not be liable to the Client for any loss or damage the Client suffers because I.C.M. has exercised its rights under this clause.
- 11.2 I.C.M. may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice I.C.M. shall repay to the Client any money paid by the Client for the Goods. I.C.M. shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 11.3 In the event that the Client cancels delivery of any Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by I.C.M. as a direct result of the cancellation (including, but not limited to, any loss of profits and costs of allocated labour.).
- 11.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stock list items, will definitely not be accepted once production has commenced, or an order has been placed.
- 11.5 At I.C.M. sole discretion a Reschedule fee may apply and the Client shall be liable for any and all loss incurred (whether direct or indirect) by I.C.M. as a direct result of the rescheduling previously appointed work (including, but not limited to, any loss of profits and costs of allocated labour).
- 12. Risk**
- 12.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 12.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, I.C.M. is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by I.C.M. is sufficient evidence of I.C.M.'s rights

- to receive the insurance proceeds without the need for any person dealing with I.C.M. to make further enquiries.
- 12.3 Where I.C.M. is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and I.C.M. shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 12.4 I.C.M. 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, I.C.M. accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 12.5 Where the Client has supplied materials for I.C.M. to complete the Services, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. I.C.M. shall not be responsible for any defects in the Services, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 12.6 The Client acknowledges that any damage to the Goods supplied by I.C.M. by the Client or a third party shall be the responsibility of the Client with any repair work being a variation to the original scope of work.
- 12.7 The Client acknowledges that Goods supplied may exhibit variations in shade tone, colour, texture, markings, veining, surface and finish, and may fade or change colour over time. I.C.M. will make every effort to match batches/samples of the Goods supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 12.8 The Client acknowledges that Goods 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.
- 13. Privacy**
- 13.1 All emails, documents, images or other recorded information held or used by I.C.M. is Personal Information, as defined and referred to in clause 13.2, and therefore considered Confidential Information. I.C.M. acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part III C of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). I.C.M. acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by I.C.M. that may result in serious harm to the Client, I.C.M. will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 13.2 The Client agrees for I.C.M. 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 I.C.M..
- 13.3 The Client agrees that I.C.M. 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.
- 13.4 The Client consents to I.C.M. being given a consumer credit report to collect overdue payment on commercial credit.
- 13.5 The Client agrees that personal credit information provided may be used and retained by I.C.M. for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; 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 Goods.
- 13.6 I.C.M. may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report; allow the CRB to create or maintain a credit information file about the Client including credit history.
- 13.7 The information given to the CRB may include:
- (a) personal information as outlined in 13.1 above;
 - (b) name of the credit provider and that I.C.M. 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 I.C.M. has been paid or otherwise discharged and all details surrounding that discharge (e.g., dates of payments);
 - (f) information that, in the opinion of I.C.M., the Client has committed a serious credit infringement;
 - (g) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 13.8 The Client shall have the right to request (by e-mail) from I.C.M.:
- (a) a copy of the information about the Client retained by I.C.M. and the right to request that I.C.M. correct any incorrect information; and
 - (b) that I.C.M. does not disclose any personal information about the Client for the purpose of direct marketing.
- 13.9 I.C.M. 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 fulfill the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 13.10 The Client can make a privacy complaint by contacting I.C.M. via e-mail. I.C.M. 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.
- 14. Trusts**
- 14.1 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 I.C.M. Construction (QLD) Pty Ltd may have notice of the Trust, the Client covenants with I.C.M. Construction (QLD) Pty Ltd 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 I.C.M. Construction (QLD) Pty Ltd 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.
- 15. Building Industry Security of Payments Act 2017 (VIC)**
- 15.1 At I.C.M.'s sole discretion, if there are any disputes or claims for unpaid Goods and/or Services and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 2017 2004 may apply.
- 15.2 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 2017 of Queensland, except to the extent permitted by the Act where applicable.
- 16. Site Access**
- 16.1 The Client shall ensure that I.C.M. clear and free access to the site at all times to enable them to undertake the Works. I.C.M. 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 I.C.M..
- 16.2 It shall be the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks. The Client agrees to indemnify I.C.M. against all costs incurred by I.C.M. in recovering such vehicles in the event they become bogged or otherwise immovable.
- 17. Provision of the Works**
- 17.1 Subject to clause 17.2 it is I.C.M.'s responsibility to ensure that the Works start as soon as it is reasonably possible.
- 17.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that I.C.M.26.26 claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond I.C.M.'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 I.C.M. that the site is ready.
- 18. Client's Responsibilities**
- 18.1 It is the intention of I.C.M., and agreed by the Client, that it is the responsibility of the Client to:
- (a) provide and have erected scaffolding to enable the Works to be undertaken (where in I.C.M.'s opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed; and
 - (b) make the premises clean, clear and available on the agreed date and time. If installation is interrupted by the failure of the Client to adhere to the installation schedule agreed to between I.C.M. and the Client, any additional costs will be invoiced to the Client as an extra; and
 - (c) provide adequate dust sheets to protect the Client's furniture and décor. I.C.M. will not accept any responsibility for cleaning or repair
- costs attributed to dust or damage caused by any residue of the plastering mix or residue to the floor or tiles.
- 18.2 If I.C.M. notifies the Client that it intends to store on site Materials, plant, equipment or tools to be used in performance of the Works, then the Client shall designate an area for storage and shall take all reasonable precautions to protect such items against destruction, damage, or theft. In the event that such items are destroyed, damaged or stolen then the cost of replacement shall be added to the contract Price and will be shown as a variation as per clause 3.3.
- 19. Underground/Hidden Locations**
- 19.1 Prior to I.C.M. commencing the Works the Client must advise I.C.M. of the precise location of all services on the site and clearly mark the same. The mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the site.
- 19.2 Whilst I.C.M. will take all care to avoid damage to any underground/hidden services, the Client agrees to indemnify I.C.M. in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 19.1.
- 20. Compliance with Laws**
- 20.1 The Client and I.C.M. 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.
- 20.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 20.3 The Client agrees that the site will comply with any works health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 21. Force Majeure**
- 21.1 Neither I.C.M. or the Client shall be liable for any default on a Project due to any force majeure act, event or cause (other than lack of funds which is beyond the reasonable control of that party, including:
- (a) Act of God, peril of the sea, accident of navigation, war, sabotage, riot, insurrection, civil commotion, national emergency (whether in fact or law), martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of the party concerned), epidemic, quarantine, radiation or radioactive contamination;
 - (b) Action or inaction of any government or governmental or other competent authority (including any court of competent jurisdiction), including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order; and
 - (c) Breakdown of plant, machinery or equipment or shortages of labour, transportation, fuel, power or plant, machinery, equipment or material.
- 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 Queensland, the state in which I.C.M. has its principal place of business and are subject to the jurisdiction of the courts in Brisbane.
- 22.3 Subject to clause 8, I.C.M. 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 I.C.M. of these terms and conditions (alternatively I.C.M.'s liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 22.4 I.C.M. 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 I.C.M..
- 22.6 I.C.M. may elect to subcontract out any part of the Services 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 I.C.M.'s subcontractors without the authority of I.C.M..
- 22.7 The Client agrees that I.C.M. 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 I.C.M. to provide Goods to the Client.
- 22.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lockout, 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