

1. Definitions

1.1 “Contractor” means Perth Reticulation Experts Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Perth Landscaping Group Pty Ltd.

1.2 “Client” means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.

(a) When Works are booked on-behalf, the “Client” is then considered to be the company or organisation ordering the works. This includes but is not limited to:

(i) Property Managers;

(ii) NDIS Providers;

(iii) Builders;

(iv) Real Estate.

1.3 “Works” means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by the Contractor 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 the Contractor and the Client in accordance with clause 5 below.

1.5 “GST” means Goods and Services Tax (GST) 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 an order for or accepts delivery of any Works.

2.2 These terms and conditions may only be amended with the consent of both parties in writing.

2.3 Where the Client is a tenant (and therefore not the owner of the land and premises where the Materials are to be installed) then the Client warrants that full consent has been obtained from the owner for the Contractor to install the Materials on the owner’s land and premises. The Client acknowledges and agrees that they shall be personally liable for full payment of the Price for all works provided under this agreement and to indemnify the Contractor against any claim made by the owner of the premises (howsoever arising) in relation to the installation of the Materials and the provision of any related Works by the Contractor except where such claim has arisen because of the negligence of the Contractor when installing the Materials.

2.4 The Client agrees that they shall upon request from the Contractor provide evidence that:

(a) they are the owner of the land and premises upon which the Works are to be undertaken;

(b) where they are a tenant; or

(c) where they are a services provider (real estate, NDIS, etc); that they have the consent of the owner for the Materials to be installed on the land and premises upon which the works are to be undertaken.

2.5 The Client acknowledges and agrees that in the event the Contractor require access, in order to undertake the Works, to an adjoining or adjacent property or land to the nominated job site, that is not owned by the Client, then it is the Client’s responsibility to gain permission from the land owner to use the above mentioned property throughout the process of delivering the Works. In the event the land owner denies access or use of the land or property, the Client shall be liable for all costs incurred by the Contractor in gaining permission to access and/or use the property through any legal process that may be deemed necessary.

3. Electronic Transactions Act 2003

3.1 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 2003 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

4.1 The Client shall give the Contractor 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, or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client’s failure to comply with this clause.

5. Price and Payment

5.1 At the Contractor’s sole discretion, the Price shall be either:

(a) as indicated on invoices provided by the Contractor to the Client in respect of Works performed or Materials supplied; or

(b) As per the Contractor’s schedule of rates:

(i) call out fee,

(ii) labour on-site - charged in 15-minute increments

(iii) any materials used to complete the Works

(c) the Contractor’s quoted Price (subject to clause 5.2) which shall be binding upon the Contractor, provided that the Client shall accept the Contractor’s quotation in writing within thirty (30) days or by payment of a deposit. Unless otherwise stated, quotations shall not have an allowance for:

(i) unforeseen scenarios such as, without limitation, concrete sub-based, drainage systems or any other additional Works (including those listed on clause 5.2 (c) (below)); or

(ii) additional excavation and disposal costs.

5.2 The Contractor 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 unknown (to the contractor), hidden or unidentifiable difficulties which are beyond the Contractor’s subjective ability to accurately assess (including, but not limited to, poor weather conditions, limitations to accessing the site, subsurface soil conditions (such as hard rock barriers such as limestone below the surface, tree stumps or iron reinforcing rods in concrete), obscured

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site defects, hidden live or redundant services, additional site works requiring shoring, piling, piercing, propping, under-pinning, remobilising or work site, soil stabilisation (if not expressly included in the contract), additional engineering required to acquire building license and/or imposed by site conditions or council requirements, etc.), any environment or contamination issues (for example, without limitation, asbestos, contaminated soil or sub surface water, chemical treatment or remediation, remobilisation of the work site, removal of excess soils or rubble etc) which are only discovered on commencement of the Works; or

(d) in the event of increases to the Contractor in the cost of labour or materials which are beyond the Contractor's control.

5.3 Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Client shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor 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.

5.4 The Contractor reserves the right to hold a credit card on file (in Stripe, a secure, third-party system) in order to reserve a booking for the Works or to carry out regular, recurring services:

(a) Online bank transfer is the preferred payment method.

(b) The Contractor will only process the card on file after an invoice has become overdue. This will incur an additional fee of (\$0.30 + 1.75% of transaction value along with a fixed Administrative fee of \$10).

(c) There is a strict 7-day payment policy from the reception of the invoice.

(d) This card will be removed from the file at the Client's request if payment has been received and no further services are required.

(e) The Contractor shares no responsibility or liability for any breach of Stripe that incurs the loss of or exposure of the Client's details.

5.5 At the Contractor's sole discretion, a non-refundable deposit may be required to secure a booking with the commencement date to be confirmed and that any such deposit paid will be deducted from the final invoice.

5.6 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:

(a) on completion of the Works; or

(b) before the delivery of the Work; or

(c) by way of progress payments in accordance with the Contractor's specified progress payment schedule and 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. Generally the payment plan is based on:

(i) a deposit;

(ii) a payment to cover all the materials costs to be paid on commencement of the Works;

(iii) an interim payment of fifty percent (50%) of the remaining balance due halfway during construction where such construction is planned for more than five (5) days;

(iv) balance of outstanding amount due on completion.

(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Contractor.

5.7 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Contractor.

5.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.

5.9 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement 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.

6. Delivery of the Works

6.1 Subject to clause 6.2 it is the Contractor's responsibility to ensure that the Works start as soon as it is reasonably possible.

6.2 The Works' commencement date will be scheduled by the Contractor, but may be rescheduled and/or the completion date extended by whatever time is reasonable in the event completion is delayed by an event beyond the Contractor's control, including but not limited to:

(a) weather events

(b) staffing issues

(c) material unavailability

Along with any failure by the Client to:

(i) make a selection; or

(ii) pay any requested deposit; or

(iii) have the site ready for the Works; or

(iv) notify the Contractor that the site is ready/the job is confirmed within office business hours.

6.3 At the Contractor's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price (if not expressly stated as included in any quotation).

6.4 The Contractor may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

6.5 Any time specified by the Contractor for delivery of the Works is an estimate only and the Contractor will not be liable for any direct or indirect 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 the Contractor is unable to supply the Works as agreed solely due to any action or inaction of the Client, then the Contractor 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 and any other direct or indirect costs incurred.

(a) Where the site is not accessible on the agreed date, the call out fee will be charged for each travel to the property

(b) Where the site is contaminated (i.e. dog feces) the contractor reserves the right to leave the property and charge for call out, labour used to this point and any parts used to that point. Work will then be rescheduled for another time, and a new call out fee will be payable upon return.

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- (c) Where the site has unrestrained pets (e.g. dogs) and/or young children unsupervised the contractor will NOT start the work until rectified
- (d) Where the client is not home / able to rectify the problem at the scheduled time of the attendance the contractor shall leave the premises and the call out, labour time and any other incurred costs will be charged to the customer.
- 6.6 Where the Client requires the Works to be rescheduled or cancelled (as per clause 20.3), the Client is required to provide the Contractor with at least 2 working days notice prior to the scheduled commencement time. Where the client fails to provide appropriate notice a fee may be charged
- (a) Our reception office hours are Monday to Thursday from 9AM to 5PM and Friday from 9AM to 3PM - cancellation notices have to be received within those above mentioned hours
- (b) Our technician site attendance is between 7AM to 5PM unless otherwise agreed.
- 6.7 The Contractor may from time to time, be required to dig out plants, lift pavers and/or fixtures, cut roots, remove section of turf in order to perform the requested repairs/works; The Contractor will endeavour to reinstate as close as possible to pre-existing conditions but decline all responsibility in the event that damages occur to the above mentioned elements.
- 6.8 The Contractor recommends that where additional work is to be performed by third parties after the completion of the Contractor's Works, that such scheduling allows for any delays that may affect the Contractor satisfactorily completing the Works in the proposed time frame (including, but not limited to, events as per clause 6.2, inclement weather, etc.). As stated in clause 6.5 above, the contractor is not liable for any direct or indirect costs arising as a consequence of any third party or additional work not being executed as a consequence of the Contractor's works.

7. Risk

- 7.1 If the Contractor retains ownership of the Materials under clause 14 then:
- (a) where the Contractor 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; and
- (b) delivery of the Materials shall be deemed to have taken place immediately at the time that either;
- 7.2 the Client or the Client's nominated carrier takes possession of the Materials at the Contractor's address; or
- (a) the Materials are delivered by the Contractor or the Contractor's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address or an incorrect address has been provided).
- (b) where the Contractor is to both supply and install Materials then the Contractor shall maintain a contract works insurance policy until the Works are practically completed. Upon practical completion of the Works all risk for the Works shall immediately pass to the Client.
- 7.3 The Contractor will not clean the site if animal faeces or other contaminants could cause a health or safety issue for the Contractor's employees or agents. If the Contractor arrives at the site and the Client has not removed/organised to remove animal faeces or other contaminants from the site then the Contractor, at its discretion, may not be able to render services within the contaminated/unsafe areas and will still charge for the call out and any of the Works able to be undertaken to that point.
- 7.4 Where the Client has supplied materials for the Contractor to complete the Works, the Client acknowledges that she/he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. The Contractor shall not be responsible for any defects in the materials, any loss or damage to vegetation (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 7.5 The Client shall have any materials to be supplied for the completion of the Works onsite prior to commencement of the Works.
- 7.6 Where the Contractor requires that Materials, fittings and appliances, or plant and tools required for the Works be stored at the Site, the Client shall supply the Contractor a safe area for storage and shall take all reasonable efforts to protect all items from possible destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement and any other direct or indirect costs arising shall be the Client's responsibility.
- 7.7 Where the Contractor is required to install the Materials the Client warrants that the structure of the premises or equipment in or upon which these Materials are to be installed or erected is sound and will sustain the installation and work incidental thereto and the Contractor shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation (including but not limited to insufficient or defective foundations, walls or other structures not erected by the Contractor).
- 7.8 Advice or recommendations to the Client, or the Client's agent, are given in general terms only and no liability will be accepted as a result of the client following the advice without seeking alternative professional advice.
- 7.9 The Client further 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.
- 7.10 The Client accepts that the use of loud machinery may need to be used for the completion of the Works and shall be the responsibility to inform the Contractor in advance of any suitable reasonable times when such machinery cannot be operated. If any notified restricted times for machinery operation result in delays to the Contractor, the client agrees that the Contractor is entitled to any reasonable additional costs arising from any Client limitation of loud machinery usage. These machines may also generate dust and smoke and therefore the Contractor recommends that windows and doors are kept shut whilst such machinery is in use. The Contractor is not responsible for any cleaning inside or on the perimeter of any house or structure of the Client's, where caused by loud, or any other, machinery used by the contractor. The client must indemnify the Contractor against any loss or claim which may arise out of the Contractor performing the Works, including in relation but not limited to:
- (a) personal injury or death; and
- (b) theft, loss or damage to property.
- 7.11 The contractor is responsible for its own:
- (a) worker compensation insurance; and
- (b) public liability insurance;
- (c) the Client indemnity in clause 7.14 above excludes any loss or damages which the Contractor accrues as a consequence of its workers compensation or public liability insurance.

8. Client's Responsibilities

8.1 The Client acknowledges that;

(a) it is his/her responsibility to ensure that all Materials which the Contractor is required to install are of the correct type, size, rating, standard, quality, colour and finish, and are as specified in the specifications, drawings and plans upon which the Contractor based the quotation on and therefore, the Client agrees to indemnify the Contractor against any costs incurred by the Contractor in rectifying such errors or shortfalls, if required.

(b) the Contractor is not responsible for the removal of trade waste (including, but not limited to, contaminated soil stockpiling of excess spoil) from or clean-up of the building/construction site/s. This is the responsibility of the Client or the Client's agent. Under no circumstances will the Contractor handle removal of asbestos product or contaminated material.

(c) she/he is to inform the Contractor prior to fertiliser or weed spreading of any organic enterprises adjacent to the property of any streams, shallow aquifers or any other geological feature that could be harmed by the accidental introduction of fertiliser, herbicides or pesticides.

8.2 The Client acknowledges that all communications pertaining to the Works must be made within the Contractor's staffed business hours (9am-5pm / 9am-3pm Friday) and with enough time in advance of the scheduled Works in order for a response to be given or action to be taken. E.g. no tasks will be carried out if requested over the weekend with the Works to commence on the Monday.

8.3 It is further agreed that the Client will supply water, power, temporary lighting, toilet, eating and first aid facilities if required - for installations taking place over a period of time longer than a day.

9. Access

9.1 The Client shall ensure that the Contractor has clear and free access to the work site at all times to enable it to undertake the Works. The Contractor shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of the Contractor.

9.2 If the Contractor arrives for the Works as scheduled, has provided adequate notice to the Client and is unable to attain access to the site, the call out fee, along with any time spent to contact the Client to rectify, will be charged for in full.

9.3 Access shall only be allowed during the Contractor's standard working hours (7.00am - 5.00pm).

10. Surplus Materials

1.1 Unless otherwise stated elsewhere in this contract:

(a) only suitable new Materials will be used;

(b) demolished materials remain the Client's property and responsibility for removal;

(c) Excess materials and /or products purchased for the Works will be removed from the site by the Contractor, unless agreed prior to works or specifically requested by the Client prior to the Contractor leaving the property.

11. Underground Locations

11.1 Prior to the Contractor commencing any work the Client must advise the Contractor of the precise location of all underground services on the site and clearly mark the same. The underground mains & 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, redundant services and any other services that may be on site.

11.2 Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor 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 11.1.

12. Compliance with Laws

12.1 The Client and the Contractor 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.

12.3 The Client agrees that the site will comply with any work occupational health and safety laws health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

12.4 The Client indemnifies the Contractor against any costs, loss, damage, fine, penalty or claim arising out of this clause 13.

13. Title

13.1 The Contractor and the Client agree that ownership of the Materials shall not pass until:

(a) the Client has paid the Contractor all amounts owing to the Contractor; and

(b) The Client has met all of its other obligations to the Contractor.

13.2 Receipt by the Contractor 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 by the Contractor's bank.

13.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 14.1 & 14.2:

(a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Contractor on request;

(b) the Client holds the benefit of the Client's insurance of the Materials on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;

(c) the production of these terms and conditions by the Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor to make further enquiries;

(d) the Client must provide a copy of his/her policy of insurance at any time, upon request by the Contractor;

(e) the Client must not sell, dispose, or otherwise part with possession of the Materials prior to paying the Contractor the full value of the Materials. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand;

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- (f) the Client must not convert or process the Materials 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 the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs;
- (g) unless the Materials have become fixtures the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials;
- (h) the Contractor may recover possession of any Materials in transit whether or not delivery has occurred.;
- (i) 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 the Contractor; and
- (j) the Contractor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

14. Personal Property Securities Act 2009 (“PPSA”)

14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

14.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials and/or collateral (account) – being a monetary obligation of the Client to the Contractor for Works – that have previously been supplied and that will be supplied in the future by the Contractor to the Client.

14.3 The Client undertakes to:

(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to:

- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 15.3(a)(i) or 15.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of the Contractor;
- (e) immediately advise the Contractor of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.

14.4 The Contractor and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

14.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

14.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

14.7 Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.

14.8 The Client shall unconditionally ratify any actions taken by the Contractor under this clause 15.

14.9 Subject to any express provisions to the contrary (including those contained in this clause 15) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

15.1 In consideration of the Contractor agreeing to supply the Materials, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

15.2 In addition, the Client charges the location of the Works with the payment to the Contractor of all money payable to the contractor under this Contract or otherwise from the carrying out of the Works.

15.3 The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.

15.4 The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.

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

16.1 The Client must inspect all Materials and/or workmanship on completion of the work and report any defects or issues to the contractor or its representative on-site; where the client can not be present at the time of completion the work is deemed to be as per the technician report.

16.2 The contractor agrees to provide a written report stating the completed work and any further recommendations.

16.3 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**).

16.4 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

16.5 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.

16.6 If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2. [??]

16.7 If the Contractor is required to replace any Materials under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Client has paid for the non-compliant Materials.

16.8 If the Contractor is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then the Contractor 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.

16.9 If the Client is not a consumer within the meaning of the CCA, the Contractor'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 the Contractor at the Contractor's sole discretion;
- (b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Materials;
- (c) otherwise negated absolutely.

16.10 Subject to this clause 17, returns will only be accepted provided that:

- (a) the Client has complied with the provisions of clause 17.1; and
- (b) the Contractor 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.

16.11 Notwithstanding clauses 17.1 to 17.9 but subject to the CCA, the Contractor 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 the Contractor's prior approval;
- (e) the Client failing to follow any instructions or guidelines provided by the Contractor;
- (f) any Client supplied Materials; or
- (g) fair wear and tear, any accident, or act of God.

16.12 In the case of second hand Materials, or Materials supplied by the client no warranty will be provided for workmanship nor the materials

16.13 Warranties -

(a) where the client requests a visit to the property for warranty purposes, only workmanship or materials installed by the contractor are covered by this warranty, where the call out proves to be outside of warranty or the reported problem the client is liable to pay for call out, labour and materials used

(b) where the client requests additional works outside of the warranty to be performed at the time of a warranty claim the call out, labour and materials are charged for this additional work.

(c) We provide a 12 months warranty on all PVC pipes and fittings & 3 months warranty on all poly pipes & fittings

(i) this excludes mis-use, damages done by pets and or owners.

17. Intellectual Property

17.1 Where the Contractor 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 the Contractor, and shall only be used by the Client at the Contractor's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.

17.2 The Client warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.

17.3 The Client agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which the Contractor has created for the Client.

18. Default and Consequences of Default

18.1 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 the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

18.2 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's contract default fee, and bank dishonour fees).

18.3 Further to any other rights or remedies the Contractor may have under this contract, if a Client has made payment to the Contractor, 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 the Contractor under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.

18.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Contractor becomes overdue, or in the Contractor'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 the Contractor;
- (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.

19. Cancellation

19.1 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Works to the Client. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.

19.2 The Contractor 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 the Contractor shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.

19.3 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 the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).

19.4 Cancellation of orders for products made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.

20. Privacy Act 1988

20.1 Collection of Personal Information

20.2 (a) We collect personal information from you for the purpose of providing our products and services, and to comply with legal obligations.

20.3 (b) The types of personal information we may collect from you include your name, address, email address, and payment information.

20.4 (c) We will collect personal information directly from you unless it is unreasonable or impractical to do so.

20.5 Use and Disclosure of Personal Information

20.6 (a) We will use personal information for the purpose for which it was collected, and for related purposes that you would reasonably expect.

20.7 (b) We may disclose personal information to third-party service providers who assist us in providing our products and services, or as required by law.

20.8 (c) We will not disclose personal information to any other third party without your consent, unless required by law.

20.9 Security of Personal Information

20.10 (a) We will take reasonable steps to protect personal information from misuse, interference, loss, unauthorized access, modification or disclosure.

20.11 (b) We will store personal information on secure servers, and restrict access to personal information to authorized personnel only.

20.12 (c) We will destroy or de-identify personal information when it is no longer needed for the purposes for which it was collected, or as required by law.

20.13 Access and Correction of Personal Information

20.14 (a) You may request access to personal information we hold about you by contacting us at [insert contact details].

20.15 (b) We will respond to requests for access to personal information within a reasonable time.

20.16 (c) If you believe that personal information we hold about you is inaccurate, incomplete or out-of-date, you may request that we correct it.

20.17 Complaints

20.18 (a) If you have a complaint about our handling of your personal information, you may contact us at info@reticulationperth.com.

20.19 (b) We will investigate your complaint and provide a response within a reasonable time.

20.20 (c) If you are not satisfied with our response to your complaint, you may contact the Office of the Australian Information Commissioner.

20.21 By using our products and services, you acknowledge that you have read and understood this Privacy Act 1988 clause, and consent to the collection, use, disclosure, storage and handling of your personal information in accordance with this clause and the Privacy Act 1988.

20.22 The Client shall have the right to request (by email) from the Contractor:

(a) a copy of the information about the Client retained by the Contractor and the right to request that the Contractor correct any incorrect information; and

(b) that the Contractor does not disclose any personal information about the Client for the purpose of direct marketing.

21. Dispute Resolution

21.1 If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration, or commence court proceedings. Any arbitration shall be:

(a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and

(b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

22. Service of Notices

22.1 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 email to the other party's last known email address;

22.2 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;

23. General

23.1 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.

23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia, the state in which the Contractor has its principal place of business, and are subject to the jurisdiction of the Perth Courts in that state.

23.3 Subject to clause 17 the Contractor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).

23.4 Neither party to this contract may assign this contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld). The Contractor may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Contractor's subcontractors without the authority of the Contractor.

23.5 The Client agrees that the Contractor may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Contractor to provide Works to the Client.

23.6 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.

23.7 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.

24. Annex

25. Service Descriptions

(a) Call out fee - call out fees are charged for every visit to a client property and only include the labour allowance as advertised. **The most up to date fees will be listed on our website.**

(b) Labour - is charged in 15 min increments, is charged for all time on the property, from arrival to departure and includes all work-related labour, including but not limited to, performing irrigation-related tasks, fault finding and diagnosis, discussion with the client, writing of reports or calls to Senior technicians for advice on resolving particular issues.

(c) Parts - as is standard, we charge for each part at a higher rate than available through retail stores; this covers regular margins (as defined solely by us), and includes for costs incurred such as, stocking fee (bulk purchases to allow all vehicles to arrive fully-stocked to jobs), administrative costs, sourcing and ordering time, replacement warranties, etc. We do our best to charge fairly while ensuring business operational sustainability.

(d) Irrigation Assessment - to quote for new systems. Includes up to 30 min on-site, the purpose of which is to identify the cost of Works required, take measurements and generate a quotation to supply and install the irrigation system Works. No design is provided at this stage. **Assessments are charged for then credited if our quote is accepted – the most up to date fees for this will be listed on our website.** Quotations are provided to the best of the information and site/issue knowledge able to be obtained during the assessment time, additional costs may be advised during the Works if impossible to know prior; e.g. due to underground obstructions once trenching begins. If a full design is required this will incur additional charges based on the level of detail and work required.