

## Gold Coast Marble & Granite – Terms & Conditions of Trade

### 1. Definitions

- 1.1 "GCM&G" means Gold Coast Marble & Granite Pty Ltd ATF Castles Family Trust & Penfold Family Trust (In Partnership) T/A Gold Coast Marble & Granite, its successors and assigns or any person acting on behalf of and with the authority of Gold Coast Marble & Granite Pty Ltd ATF Castles Family Trust & Penfold Family Trust (In Partnership) T/A Gold Coast Marble & Granite.
- 1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by GCM&G to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between GCM&G and the Customer in accordance with clause 5 below.

### 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with GCM&G's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and GCM&G.
- 2.3 None of GCM&G's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of GCM&G in writing nor is GCM&G bound by any such unauthorised statements.

### 3. Electronic Transactions (Queensland) Act 2001

- 3.1 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.

### 4. Change in Control

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

### 5. Price and Payment

- 5.1 At GCM&G's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by GCM&G to the Customer; or
  - (b) GCM&G's estimated Price (subject to clause 6). No allowances shall be made for site preparation unless specified in the estimate. The final price can only be ascertained upon completion of the works. Variances in the estimated Price of more than ten percent (10%) will be subject to the Customer's approval before proceeding with the Services; or
  - (c) GCM&G's quoted price (subject to clause 6) which will be valid for the period stated in the quotation or otherwise for a period of sixty (60) days.
- 5.2 At GCM&G's sole discretion a deposit may be required.
- 5.3 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by GCM&G, which may be:
- (a) on delivery of the Goods;
  - (b) on the first (1<sup>st</sup>) day of the month following the month in which a statement is posted to the Customer's address or address for notices;
  - (c) the date specified on any quotation, invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by GCM&G.
- 5.4 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and GCM&G.
- 5.5 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to GCM&G an amount equal to any GST GCM&G must pay for any supply by GCM&G under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 6. Variations

- 6.1 In the event that the Customer requests a variation, GCM&G will give the Customer a written variation document detailing the Services, the Price, the estimated time to undertake the variation, and the likely delay, if any and require written acceptance of the variation before commencing Services on the variation.
- 6.2 In the event that GCM&G requests a variation, GCM&G will state the reason for the variation in writing and require written acceptance by the Customer of the variation before commencing Services on the variation.
- 6.3 In the event of unforeseeable problems with the site which are only revealed when undertaking the Services GCM&G may carry out any Services needed to fix any such problem if GCM&G considers it necessary for satisfactory and safe completion of the Services. Any additional Services necessary due to an unforeseen problems (including, but not limited to, limitations to accessing the site, availability of machinery, safety considerations including the discovery of asbestos, prerequisite work by any third party not being completed or as a result of any increase to GCM&G in the cost of materials and labour) is to be treated as a variation. However if a Price is not agreed upon then the Customer will be charged at GCM&G's actual cost plus twenty (20%) percent for the Services.

### 7. Delivery of Goods

- 7.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at GCM&G's address; or

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- (b) GCM&G (or GCM&G's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.2 At GCM&G's sole discretion the cost of delivery is included in the Price.
- 7.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then GCM&G shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.4 GCM&G may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 The Services shall be deemed to be practically completed when subject to clauses 9.1 and 9.2 the Services carried out under this contract have been completed without any omissions or defects in accordance with the plans and specifications set out in this contract.
- 7.6 Any time or date given by GCM&G to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and GCM&G will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
- 8. Risk**
- 8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, GCM&G is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by GCM&G is sufficient evidence of GCM&G's rights to receive the insurance proceeds without the need for any person dealing with GCM&G to make further enquiries.
- 8.3 If the Customer requests GCM&G to leave Goods outside GCM&G's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 8.4 Granite, marble, engineered stone, and glass are based on natural products, have natural colour and shade tones, markings, and veining that may vary from colour samples provided. GCM&G gives no guarantee (expressed or implied) that colour samples will match the Goods supplied. GCM&G will make every effort to match colour samples to the Goods supplied but will not be liable in any way whatsoever for colour samples differing from the Goods supplied.
- 8.5 Marble and Granite being porous products, therefore, all products supplied by GCM&G are sealed for protection. However, oil and other acidic substances are prone to causing discolouration and staining if left on surfaces for some time. The Customer agrees to indemnify GCM&G against any damage occurring after delivery and installation.
- 8.6 The Customer 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.
- 8.7 The Customer accepts that it is the Customer's or the Customer's agent to be responsible to remove rubbish from or clean-up of the building/construction site/s.
- 9. Practical Completion**
- 9.1 In addition to clause 7.5 practical completion also takes place when, in the event of a minor omission or defect GCM&G gives the Customer a defects document that:
- (a) lists the minor defects and minor omissions that both GCM&G and Customer agree exist; and
  - (b) states by when GCM&G is to correct the listed defects and omissions; and
  - (c) lists the minor defects and omissions the Customer claims exist, but that are not agreed by GCM&G to exist; and
  - (d) is signed by GCM&G.
- 9.2 GCM&G shall be entitled to make a claim for any completion payment so long as GCM&G has made all reasonable efforts to have the Customer sign the defects document to acknowledge its contents.
- 10. Surplus Goods**
- 10.1 Unless otherwise stated elsewhere in this contract:
- (a) only suitable new Goods will be used;
  - (b) demolished Goods remain the Customer's property; and
  - (c) Goods which GCM&G brings to the site which are surplus remain the property of GCM&G.
- 11. Accuracy of Customer's Plans and Measurements**
- 11.1 GCM&G shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, GCM&G accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 12. Access**
- 12.1 The Customer shall ensure that GCM&G has clear and free access to the work site at all times to enable them to undertake the Services. GCM&G 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 GCM&G.
- 13. Compliance with Laws**
- 13.1 The Customer and GCM&G shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 13.2 The Customer agrees that the site will comply with any occupational or work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

**14. CGM&G's Obligations**

- 14.1 To the extent required by statute GCM&G warrants that:
- (a) the Services shall be carried out in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract schedule;
  - (b) all Goods supplied be good and, having regard to the relevant criteria, suitable for the purpose for which they are used and that, unless otherwise stated in this contract, those Goods will be new;
  - (c) the Services will be carried out in accordance with all relevant laws and legal requirements (including, but not limited to, the Building Act 1975);
  - (d) the Services will be carried out in an appropriate and skilful way, with reasonable skill and care;
  - (e) if the Services consist of the construction of a detached dwelling or are intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, that the detached dwelling or home will be suitable for occupation when the Services are finished; and
  - (f) if the contract states the particular purpose for which the Services are required, or the result which the Customer wishes the Services to achieve (so as to show that the Customer relies on GCM&G's skill and judgement) then the Services and any Goods will be reasonably fit for that purpose or will be of such a nature and quality that they might reasonably be expected to achieve that result.
- 14.2 Clause 14.1(b) does not apply if GCM&G is subject to the direction of the Customer's architect for the supply of Goods, or the Customer is responsible for nominating the Goods and either:
- (a) there are no reasonable grounds for not using the Goods; or
  - (b) there are reasonable grounds for not using the Goods and GCM&G advises the Customer as such in writing and the Customer still insists on the Goods being used.

**15. Title**

- 15.1 GCM&G and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid GCM&G all amounts owing to GCM&G; and
  - (b) the Customer has met all of its other obligations to GCM&G.
- 15.2 Receipt by GCM&G 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.
- 15.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 15.1 that the Customer is only a bailee of the Goods and must return the Goods to GCM&G on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for GCM&G and must pay to GCM&G the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for GCM&G and must pay or deliver the proceeds to GCM&G on demand.
  - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of GCM&G and must sell, dispose of or return the resulting product to GCM&G as it so directs.
  - (e) the Customer irrevocably authorises GCM&G to enter any premises where GCM&G believes the Goods are kept and recover possession of the Goods.
  - (f) GCM&G may recover possession of any Goods in transit whether or not delivery has occurred.
  - (g) the Customer 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 GCM&G.
  - (h) GCM&G may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

**16. Personal Property Securities Act 2009 ("PPSA")**

- 16.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 16.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to GCM&G for Services – that have previously been supplied and that will be supplied in the future by GCM&G to the Customer.
- 16.3 The Customer 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 GCM&G 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 16.3(a)(i) or 16.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, GCM&G 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 Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of GCM&G;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of GCM&G;
  - (e) immediately advise GCM&G of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

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- 16.4 GCM&G and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 16.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 16.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 16.7 Unless otherwise agreed to in writing by GCM&G, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 16.8 The Customer must unconditionally ratify any actions taken by GCM&G under clauses 16.3 to 16.5.
- 16.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 17. Security and Charge

- 17.1 In consideration of GCM&G agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 17.2 The Customer indemnifies GCM&G from and against all GCM&G's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising GCM&G's rights under this clause.
- 17.3 The Customer irrevocably appoints GCM&G and each director of GCM&G as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Customer's behalf.

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

- 18.1 The Customer must inspect the Goods immediately on delivery and must within twenty-four (24) hours of delivery notify GCM&G in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow GCM&G to inspect the Goods.
- 18.2 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**).
- 18.3 GCM&G acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 18.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, GCM&G makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. GCM&G's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 18.5 If the Customer is a consumer within the meaning of the CCA, GCM&G's liability is limited to the extent permitted by section 64A of Schedule 2.
- 18.6 If GCM&G is required to replace the Goods under this clause or the CCA, but is unable to do so, GCM&G may refund any money the Customer has paid for the Goods.
- 18.7 If the Customer is not a consumer within the meaning of the CCA, GCM&G's liability for any defect or damage in the Goods is:
  - (a) limited to the value of any express warranty or warranty card provided to the Customer by GCM&G at GCM&G's sole discretion;
  - (b) limited to any warranty to which GCM&G is entitled, if GCM&G did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 18.8 Subject to this clause 18, returns will only be accepted provided that:
  - (a) the Customer has complied with the provisions of clause 18.1; and
  - (b) GCM&G has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 18.9 Notwithstanding clauses 18.1 to 18.8 but subject to the CCA, GCM&G shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
  - (a) the Customer failing to properly maintain or store any Goods;
  - (b) the Customer using the Goods for any purpose other than that for which they were designed;
  - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Customer failing to follow any instructions or guidelines provided by GCM&G;
  - (e) fair wear and tear, any accident, or act of God.
- 18.10 GCM&G may in its absolute discretion accept non-defective Goods for return in which case GCM&G may require the Customer to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.
- 18.11 Notwithstanding anything contained in this clause if GCM&G is required by a law to accept a return then GCM&G will only accept a return on the conditions imposed by that law.

### 19. Intellectual Property

- 19.1 Where GCM&G has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of GCM&G.
- 19.2 The Customer warrants that all designs, specifications or instructions given to GCM&G will not cause GCM&G to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify GCM&G against any action taken by a third party against GCM&G in respect of any such infringement.
- 19.3 The Customer agrees that GCM&G may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which GCM&G has created for the Customer.

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### 20. Default and Consequences of Default

- 20.1 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 GCM&G's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Customer owes GCM&G any money the Customer shall indemnify GCM&G from and against all costs and disbursements incurred by GCM&G in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, GCM&G's contract default fee, and bank dishonour fees).
- 20.3 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 20.4 Further to any other rights or remedies GCM&G may have under this contract, if a Customer has made payment to GCM&G by credit card, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by GCM&G under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 20.5 Without prejudice to any other remedies GCM&G may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions GCM&G may suspend or terminate the supply of Goods to the Customer. GCM&G will not be liable to the Customer for any loss or damage the Customer suffers because GCM&G has exercised its rights under this clause.
- 20.6 Without prejudice to GCM&G's other remedies at law GCM&G shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to GCM&G shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to GCM&G becomes overdue, or in GCM&G's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### 21. Cancellation

- 21.1 GCM&G 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 Customer. On giving such notice GCM&G shall repay to the Customer any money paid by the Customer for the Goods. GCM&G shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by GCM&G as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 22. Privacy Act 1988

- 22.1 The Customer agrees for GCM&G 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 Customer in relation to credit provided by GCM&G.
- 22.2 The Customer agrees that GCM&G may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 22.3 The Customer consents to GCM&G being given a consumer credit report to collect overdue payment on commercial credit.
- 22.4 The Customer agrees that personal credit information provided may be used and retained by GCM&G 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 Customer'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 Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 22.5 GCM&G may give information about the Customer 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 Customer including credit history.
- 22.6 The information given to the CRB may include:
- (a) personal information as outlined in 22.1 above;
  - (b) name of the credit provider and that GCM&G is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) 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 Customer no longer has any overdue accounts and GCM&G has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of GCM&G, the Customer has committed a serious credit infringement;
  - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

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22.7 The Customer shall have the right to request (by e-mail) from GCM&G:

- (a) a copy of the information about the Customer retained by GCM&G and the right to request that GCM&G correct any incorrect information; and
- (b) that GCM&G does not disclose any personal information about the Customer for the purpose of direct marketing.

22.8 GCM&G will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.

22.9 The Customer can make a privacy complaint by contacting GCM&G via e-mail. GCM&G will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

### 23. Unpaid Seller's Rights

23.1 Where the Customer has left any item with GCM&G for repair, modification, exchange or for GCM&G to perform any other service in relation to the item and GCM&G has not received or been tendered the whole of any monies owing to it by the Customer, GCM&G shall have, until all monies owing to GCM&G are paid:

- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

23.2 The lien of GCM&G shall continue despite the commencement of proceedings, or judgment for any moneys owing to GCM&G having been obtained against the Customer.

### 24. Dispute Resolution

24.1 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. 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.

### 25. Building and Construction Industry Security of Payment Act 2002 (if applicable)

25.1 At GCM&G's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.

25.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.

### 26. Building and Construction Industry Security of Payments Act 1999 (if applicable)

26.1 At GCM&G's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.

26.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

### 27. Building and Construction Industry Payments Act 2004 (if applicable)

27.1 At GCM&G's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Payments Act 2004 may apply.

27.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.

### 28. General

28.1 The failure by GCM&G to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect GCM&G'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.

28.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland in which GCM&G has its principal place of business, and are subject to the jurisdiction of the courts of Southport in Queensland.

28.3 Subject to clause 18, GCM&G shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by GCM&G of these terms and conditions (alternatively GCM&G's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

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

28.5 GCM&G may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

28.6 The Customer agrees that GCM&G may amend these terms and conditions at any time. If GCM&G makes a change to these terms and conditions, then that change will take effect from the date on which GCM&G notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for GCM&G to provide Goods to the Customer.

28.7 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.

28.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.