

1. Definitions

- 1.1 “Seller” shall mean Jarmen Pty Ltd T/A Wide Bay Blocks & Pavers its successors and assigns or any person acting on behalf of and with the authority of Jarmen Pty Ltd T/A Wide Bay Blocks & Pavers.
- 1.2 “Client” shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Seller to the Client.
- 1.3 “Guarantor” means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 “Goods” shall mean Goods supplied by the Seller to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Client.
- 1.5 “Services” shall mean all Services supplied by the Seller to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 “Price” shall mean the price payable for the Goods as agreed between the Seller and the Client in accordance with clause 4 of this contract.

2. The Commonwealth Trade Practices Act 1974 (“TPA”) and Fair Trading Acts (“FTA”)

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

3. Acceptance

- 3.1 Any instructions received by the Seller from the Client for the supply of Goods and/or the Client’s acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Seller.
- 3.4 The Client shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client’s name and/or any other change in the Client’s details (including but not limited to, changes in the Client’s address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client’s failure to comply with this clause.
- 3.5 Goods are supplied by the Seller only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. Price And Payment

- 4.1 At the Seller’s sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Seller to the Client in respect of Goods supplied; or
 - (b) the Seller’s quoted Price (subject to clause 4.2) which shall be binding upon the Seller provided that the Client shall accept the Seller’s quotation in writing within thirty (30) days.
- 4.2 The Seller reserves the right to change the Price in the event of a variation to the Seller’s quotation.
- 4.3 At the Seller’s sole discretion a deposit may be required.
- 4.4 At the Seller’s sole discretion:
 - (a) payment shall be due on delivery of the Goods; or
 - (b) payment shall be due before delivery of the Goods; or
 - (c) payment for approved Clients shall be made by instalments in accordance with the Seller’s payment schedule; or
 - (d) payment for approved Clients shall be due thirty (30) days following the end of the month in which a statement is posted to the Client’s address or address for notices.
- 4.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.6 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two and one half percent (2.5%) of the Price), or by direct credit, or by any other method as agreed to between the Client and the Seller.
- 4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Delivery Of Goods

- 5.1 At the Seller’s sole discretion delivery of the Goods shall take place when:
 - (a) the Client takes possession of the Goods at the Seller’s address; or
 - (b) the Client takes possession of the Goods at the Client’s nominated address (in the event that the Goods are delivered by the Seller or the Seller’s nominated carrier).
- 5.2 At the Seller’s sole discretion the costs of delivery are:
 - (a) in addition to the Price; or
 - (b) for the Client’s account.

- 5.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Seller shall;
- (a) be entitled to charge a reasonable fee for storage and redelivery; or
 - (b) deliver the Goods to the site as instructed, but take no responsibility for any claims in relation to shortages or damage of the Goods delivered; or
 - (c) deliver the goods to the next accessible and safe site as near as practicable to the delivery site.
- 5.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.5 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.6 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
- (a) such discrepancy in quantity shall not exceed five percent (5%); and
 - (b) the Price shall be adjusted pro rata to the discrepancy.
- 5.7 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 5.8 The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of the Seller.
- 5.9 The Client indemnifies the Seller against any claim, loss, damage or injury occasioned by the Client, the Client's agents or employees, the Seller, the Seller's agents or employees or any other person arising from the Seller or the Seller's agent entering or otherwise attending any site for the purpose of the delivering the Goods.

6. Goods On Consignment

- 6.1 Where Goods are supplied on consignment the following provisions apply specifically to those Goods:
- (a) the Goods provided to the Client on consignment remain the property of the Seller until full and final payment for them has been received by the Seller.
 - (b) the Goods shall be at the Customer's risk from the time of delivery and the Customer shall be responsible for insuring the Goods.
 - (c) the Customer may retain possession of the Goods until the Customer sells them or the Seller requires re-delivery of them to the Seller, whichever first occurs.
 - (d) if the Seller requires re-delivery of the Goods such re-delivery shall be at the Customer's cost.
 - (e) the Customer shall notify the Seller on a fortnightly basis of all consignment Goods sold during that fortnightly period and shall within seven (7) days of that fortnightly advice pay the Seller for the Goods sold.
- 6.2 The Seller is entitled to attend the Client's premises or delivery site and remove all Goods provided on consignment in the event that;
- (a) The Client enters into bankruptcy, liquidation, a deed of arrangement, is deemed to be insolvent or any creditor brings an application for a statutory demand;
 - (b) The Client fails to make any payment when it falls due in accordance with the consignment agreement; or
 - (c) The Client sells its interest in any business it carries on for which the Goods were provided or there is a change in the company structure, directors or proprietor of the business herein referred to.

7. Pallet Loan

- 7.1 The Seller may at their discretion provide to the Client during the term of construction wooden pallets marked "Wide Bay Blocks and Pavers" ("the Pallets") for the purpose of storing the Goods on site. The Client acknowledges that the Pallets shall remain at all times the property of the Seller and agrees to indemnify the Seller against any loss or damage to the Pallets as a result of the Client's use of them or any loss, damage or claim by any third party or the Client as a result of the Client's use of the Pallets. The Client acknowledges that the Seller has not made any warranty as to the fitness of the Pallets for the purpose for which the Client seeks to use them.
- 7.2 If a Client uses a Pallet or Pallets under clause 6.1 then the Client agrees to return such Pallet or Pallets in substantially the same condition as it was lent (fair wear and tear excepted) at the completion of construction or upon fourteen (14) days written notice from the Seller that it requires the return of same. The Client will be responsible for all costs associated with returning the Pallets to the Seller's premises.
- 7.3 In the event that the Client fails to return the Pallets within the notice the period the Seller may enter the premises at which the Pallets are held and remove the Pallets and the Client shall be responsible for all of the Seller's costs associated with the collection of the Pallets.

8. Risk

- 8.1 If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client immediately once Goods leave the Seller's premises irrespective of whose transport is used for delivery.
- 8.2 If any of the Goods are subject to either theft, damage or destroyed following or during delivery but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 8.3 The Client acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. The Seller will make every effort to match batches of Goods supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.

9. Title

- 9.1 The Seller and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid the Seller all amounts owing for the particular Goods; and
 - (b) the Client has met all other obligations due by the Client to the Seller in respect of all contracts between the Seller and the Client.
- 9.2 Receipt by the Seller 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 and until then the Seller's ownership or rights in respect of the Goods shall continue.
- 9.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Client are met; and
 - (b) until such time as ownership of the Goods shall pass from the Seller to the Client the Seller may give notice in writing to the Client to return the Goods or any of them to the Seller. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
 - (c) the Seller shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) if the Client fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
 - (e) the Client is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to the Seller for the Goods, on trust for the Seller; and
 - (f) the Client shall not deal with the money of the Seller in any way which may be adverse to the Seller; and
 - (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller; and
 - (h) the Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
 - (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other Goods, the parties agree that the Seller will be the owner of the end Goods.

10. Defects

- 10.1 The Client shall inspect the Goods on delivery and shall notify (in writing) the Seller of any alleged damage or shortage in quantity. If the alleged damage or shortage in quantity is not apparent at the time of delivery then the Client shall within seven (7) days of delivery (time being of the essence) notify (in writing at the Registered Office) the Seller the alleged damage or shortage in quantity. The Client shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are damaged in any way. The Seller shall be discharged from all liability whatsoever in connection with the goods unless suit is brought within three (3) months from their delivery or from the date on which the ordinary course of business delivery would have been effected. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any damage or shortage in quantity. For defective Goods, which the Seller has agreed in writing that the Client is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (CWlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.

11. Returns

- 11.1 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 10.1; and
 - (b) the Seller has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and
 - (d) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 11.2 Goods made to special order, Client specification or non-catalogue items are under no circumstances acceptable for credit or return.
- 11.3 The Seller may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Goods plus any freight.

12. Warranty

- 12.1 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 12.2 The Client accepts that despite Goods provided by the Seller being 'shower proofed', the Goods are not waterproof and are therefore subject to damage after prolonged exposure to variable weather conditions. The Client agrees that it shall not be entitled to claim or compensation as a result of the Goods not being waterproof.

13. Intellectual Property

- 13.1 Where the Seller has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in the Seller, and shall only be used by the Client at the Seller's discretion.
- 13.2 The Client warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.

14. Default & Consequences of Default

- 14.1 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 one half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Seller.
- 14.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
- 14.4 Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.
- 14.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 14.6 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client 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 Client or any asset of the Client.

15. Security And Charge

- 15.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 15.1.

16. Cancellation

- 16.1 The Seller 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 the Seller shall repay to the Client any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.

17. Privacy Act 1988

- 17.1 The Client and/or the Guarantor/s agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Seller.
- 17.2 The Client and/or the Guarantor/s agree that the Seller may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by 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 credit worthiness of Client and/or Guarantor/s.
- 17.3 The Client consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 17.4 The Client agrees that personal credit information provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Client and Seller or required by law from time to time:
- (a) provision of Goods; and/or
 - (b) marketing of Goods by the Seller, its agents or distributors in relation to the Goods; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 17.5 The Seller may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

18. General

- 18.1 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.
- 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.
- 18.3 The Seller 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 Seller of these terms and conditions.
- 18.4 In the event of any breach of this contract by the Seller the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 18.5 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 Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 18.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 18.7 The Client agrees that the Seller may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Client of such change.
- 18.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 18.9 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.