

## Arbor Centre Group Pty Ltd: Terms & Conditions of Trade

### 1. Definitions

- 1.1 "Arbor Centre" means Arbor Centre Group Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Arbor Centre Group Pty Ltd
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting Arbor Centre to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
  - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Incidental Items" means any goods, documents, designs, drawings, or materials supplied, consumed, created or deposited incidentally by Arbor Centre in the course of it conducting, or supplying to the Client, any Services.
- 1.4 "Services" means all Services supplied by Arbor Centre to the Client at the Client's request from time to time.
- 1.5 "Price" means the price payable (plus any GST where applicable) for the Services as agreed between Arbor Centre and the Client in accordance with clause 6 of this contract.
- 1.6 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

### 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by Arbor Centre.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Arbor Centre unless otherwise stated.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2011 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.4 The Client accepts when requesting or organising Arbor Centre to provide the Services that the Client shall acknowledge their interest in the Services as the lawful owner of the site or in the case of a third party that the Client has written authority to act on behalf of the third party. If the third party is intended to be responsible for the payment (or any part thereof) of the Price then in the event that the third party does not pay for the Services when due, the Client acknowledges that they shall be liable for the payment of the Price as if they had contracted the Services on their own behalf.
- 2.5 The Client acknowledges and:
  - (a) agrees:



- (i) that in the event Arbor Centre require access, in order to undertake the Services, 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 or delivering the Services. 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 Arbor Centre in gaining permission to access and/or use the property through any legal process that may be deemed necessary; and
  - (ii) to advise Arbor Centre prior to commencement of any Services where the removal of any trees may be subject to a protection order and/or on a heritage list and warrants to ensure that Arbor Centre's Services will comply with the relevant restrictions, legislation and/or by-laws. Arbor Centre shall not be liable for any loss, expense or damage suffered by the Client in relation to the Services wherever resulting from the Client's non-compliance with this clause.
- (b) accepts that:
- (i) lead times may vary and be dependent on plant variety growing times, propagation requirements, and the quantity required; and
  - (ii) planting for optimal results is weather and season dependent and any planting schedules may be based on these factors.

### **3. Errors & Omissions**

- 3.1 The Client acknowledges and accepts that Arbor Centre shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Arbor Centre in the formation and/or administration of this contract; and/or
  - (b) contained/omitted in/from any literature (hard copy and/or electronic) supplied by Arbor Centre in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Arbor Centre; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

### **4. Change in Control**

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

### **5. Proposal / Quotation**

- 5.1 Unless expressly stated by Arbor Centre, the proposed / quoted Price shall not include:
- (a) hard digging, which may affect the cost and/or position of the transplant. If a rock barrier is required than such will be in addition to the Price and shown as a variation in accordance with clause 6.2;
  - (b) additional pruning of any relocated trees other than that carried out during the relocation process. Where further surgery work to meet site conditions, should it be required, such can be arranged by Arbor Centre at additional cost.
- 5.2 In the event the Client requires any of the above, the Price will be adjusted accordingly to include the Services in accordance with clause 6.2.



## 6. Price and Payment

- 6.1 At Arbor Centre's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by Arbor Centre to the Client; or
  - (b) Arbor Centre's quoted price (subject to clause 6.2) which will be valid for the period stated in the proposal/quotation or otherwise for a period of forty (45) days.
- 6.2 Arbor Centre reserves the right to change the Price:
- (a) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, change of design, hard rock barriers below the surface, etc.) which are only discovered on commencement of the Services and mutually agreed with client.
  - (c) in the event of increases to Arbor Centre in the cost of labour or materials which are beyond Arbor Centre's control.
- 6.3 Variations which are mutually agreed, will be charged for based on Arbor Centre's quotation, and will be detailed in writing, and shown as variations on Arbor Centre's invoice. The Client shall be required to respond to any variation submitted by Arbor Centre within ten (10) working days. Failure to do so will entitle Arbor Centre to add the cost of variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At Arbor Centre's sole discretion, a non-refundable deposit may be required.
- 6.5 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by Arbor Centre, which may be:
- (a) on delivery of the Services.
  - (b) thirty (30) days following the end of the month in which a statement is delivered to the Client's address or address for notices.
  - (c) the date specified on any 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 Client by Arbor Centre.
- 6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Arbor Centre.
- 6.7 No allowance has been included within the proposal/quotation for Services to be carried out outside of Arbor Centre's normal working hours.
- 6.8 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 Arbor Centre not to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Arbor Centre an amount equal to any GST Arbor Centre must pay for any supply by Arbor Centre under this or any other agreement for providing Arbor Centre's Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.



## 7. Provision of Services

- 7.1 At Arbor Centre's sole discretion delivery of the Services shall take place when:
- (a) the Services are supplied to the Client at Arbor Centre's address; or
  - (b) the Services are supplied to the Client at the Client's nominated address.
- 7.2 Subject to clause 7.2 it is Arbor Centre's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 7.3 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Arbor Centre claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Arbor Centre's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
  - (b) have the site ready for the Services; or
  - (c) notify Arbor Centre that the site is ready.
- 7.4 At Arbor Centre's sole discretion, the costs of delivery is either included in the Price or is in addition to the Price.
- 7.5 Arbor Centre may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 7.6 Any time specified by Arbor Centre for delivery of the Services is an estimate only and Arbor Centre will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that Arbor Centre is unable to supply the Services as agreed solely due to any action or inaction of the Client then Arbor Centre shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.

## 8. Risk

- 8.1 Irrespective of whether Arbor Centre retains ownership of any Incidental Items, all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as Arbor Centre may repossess the incidental items. The Client must insure all Incidental Items on or before delivery.
- 8.2 Arbor Centre reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation the Incidental Items as a result of the Client's failure to insure in accordance with clause 8.1.
- 8.3 If the Client requests Arbor Centre to leave Incidental Items outside Arbor Centre's premises for collection or to deliver the Incidental Items to an unattended location, then such Incidental Items shall be left at the Client's sole risk.
- 8.4 Arbor Centre reserves the right to refuse to continue to complete the Services in the event that Arbor Centre believes the site/trees to be unsafe to either Arbor Centre's employees and/or the Client's property. In this event, the Client accepts Arbor Centre's right to make safe the site before Arbor Centre will continue the Services. The Client agrees to indemnify Arbor Centre against all additional costs incurred in such an event, all additional costs shall be detailed separately at the time of invoicing in accordance with clause 6.2. Arbor Centre shall not be liable for any delays caused, loss, damages, or costs however resulting from an unsafe site.
- 8.5 Allowance must be made for the guying of transplanted trees. If required, guy wires will be fitted to anchors positioned to two and a half metres (2.5m) radius from the base of the trunk (subject to species and tree size).



## **9. Access**

- 9.1 The Client shall ensure that Arbor Centre has clear and free access to the work site at all times to enable them to undertake the Services. Arbor Centre 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 Arbor Centre.
- 9.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by Arbor Centre. The Client agrees to indemnify Arbor Centre against all costs incurred by Arbor Centre in recovering such vehicles in the event they become bogged or otherwise immovable.

## **10. Underground Locations**

- 10.1 Prior to Arbor Centre commencing any work the Client must advise Arbor Centre of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 10.2 Whilst Arbor Centre will take all care to avoid damage to any underground services the Client agrees to indemnify Arbor Centre 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 10.1.

## **11. Client's Responsibilities**

- 11.1 The Client acknowledges that it is their responsibility to:
- (a) relocate any on-site underground services if required.
  - (b) provide a qualified spotter in the event that Services are to be performed within fifteen (15) metres of an HP gas main.
  - (c) confirm the existence and location of any liners and soak wells in the working vicinity.
  - (d) provide satisfactory irrigation to the tree/s within one (1) day of planting, in accordance with Arbor Centre's Maintenance Schedule; and
  - (e) remove any spoil (unless agreed otherwise).

## **12. Insurance**

- 12.1 Arbor Centre agrees to maintain Professional Indemnity Insurance and Public Liability Insurance as outlined in its April 2020 proposal.

## **13. Compliance with Laws**

- 13.1 The Client and Arbor Centre 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 Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 13.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

## **14. Title**

- 14.1 Arbor Centre and the Client agree that where it is intended that the ownership of Incidental Items is to pass to the Client that such ownership shall not pass until:
- (a) the Client has paid Arbor Centre all amounts owing for the Services; and
  - (b) the Client has met all other obligations due by the Client to Arbor Centre in respect of all contracts between Arbor Centre and the Client.



- 14.2 Receipt by Arbor Centre 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 Arbor Centre's ownership or rights in respect of the Incidental Items shall continue.
- 14.3 It is further agreed that:
- (a) the Client is only a bailee of the Incidental Items and must return the Incidental Items to Arbor Centre immediately upon request by Arbor Centre.
  - (b) the Client holds the benefit of the Client's insurance of the Incidental Items on trust for Arbor Centre and must pay to Arbor Centre the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed.
  - (c) the Client must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Client sells, disposes or parts with possession of the Incidental Items then the Client must hold the proceeds of sale of the Incidental Items on trust for Arbor Centre and must pay or deliver the proceeds to Arbor Centre on demand.
  - (d) the Client should not convert or process the Incidental Items 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 Arbor Centre and must dispose of or return the resulting product to Arbor Centre as Arbor Centre so directs.
  - (e) the Client shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of Arbor Centre.
  - (f) the Client irrevocably authorises Arbor Centre to enter any premises where Arbor Centre believes the Incidental Items are kept and recover possession of the Incidental Items.
- 15. Personal Property Securities Act 2009 ("PPSA")**
- 15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 15.2 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 Incidental Items that have previously been supplied and that will be supplied in the future by Arbor Centre to the Client.
- 15.3 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 Arbor Centre 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, Arbor Centre 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 Incidental Items charged thereby.
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of Arbor Centre.
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items in favour of a third party without the prior written consent of Arbor Centre.
- 15.4 Arbor Centre 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.
- 15.5 The Client waives their rights to receive notices under the sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.



- 15.6 The Client waives their rights as a grantor and/or debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by Arbor Centre, the Clients waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Client must unconditionally ratify any action taken by Arbor Centre under clauses 15.3 to 15.5.
- 15.9 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.

## 16. Security and Charge

- 16.1 In consideration of Arbor Centre agreeing to supply Services, 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 wither 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).
- 16.2 The Client indemnifies Arbor Centre from and against all Arbor Centre's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Arbor Centre's rights under this clause.
- 16.3 The Client irrevocably appoints Arbor Centre and each Director of Arbor Centre 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.

## 17. Defects, Warranties and the Competition and Consumer Act 2010 (CCA)

- 17.1 The Client must inspect Arbor Centre's Services on completion of the Services and must within seven (7) days notify Arbor Centre in writing of any evident defect in the Services or Incidental Items provided (including Arbor Centre's workmanship) or of any other failure by Arbor Centre to comply with the description of, or quote for, the Services which Arbor Centre was to supply. The Client must notify any other alleged defect in Arbor Centre's Services or Incidental Items as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Arbor Centre to review the Services or Incidental Items that were provided.
- 17.2 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**).
- 17.3 Arbor Centre acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Arbor Centre makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. Arbor Centre's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.5 If the Client is a consumer within the meaning of the CCA, Arbor Centre's liability is limited to the extent permitted by section 64A of Schedule 2.
- 17.6 If Arbor Centre is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then Arbor Centre may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services and Incidental Items which have been provided to the Client which were not defective.
- 17.7 If the Client is not a consumer within the meaning of the CCA, Arbor Centre's liability for any defective Services or Incidental Items is:



- (a) limited to the value of any express warranty or warranty card provided to the Client by Arbor Centre at Arbor Centre's sole discretion.
  - (b) otherwise negated absolutely.
- 17.8 Notwithstanding clauses 17.1 to 17.7 but subject to the CCA, Arbor Centre 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 Incidental Items.
  - (b) the Client using the Incidental Items for any purpose other than that for which they were designed.
  - (c) the Client continuing to use any Incidental Item after any defect became apparent or should have become apparent to a reasonably prudent operator or user.
  - (d) interference with the Services by the Client or any third party without Arbor Centre's prior approval.
  - (e) the Client failing to follow any instructions or guidelines provided by Arbor Centre.
  - (f) fair wear and tear, any accident, or act of God.

## **18. Intellectual Property**

- 18.1 Where Arbor Centre has designed, drawn, or developed Incidental Items for the Client, then the copyright in any Incidental Items shall remain the property of Arbor Centre. Under no circumstances may such designs, drawings and documents be used without the express written approval of Arbor Centre. The Client has a perpetual license to use the Incidental Items and associated Intellectual Property at no charge.
- 18.2 The Client warrants that all designs, specifications or instructions given to Arbor Centre will not cause Arbor Centre to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Arbor Centre against any action taken by a third party against Arbor Centre in respect of any such infringement.
- 18.3 The Client agrees that Arbor Centre may (at no cost) use for the purposes of marketing or entry into any competition, any Incidental Items which Arbor Centre has created for the Client if agreed to by the Client.

## **19. Default and Consequences of Default**

- 19.1 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 Arbor Centre's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes Arbor Centre any money the Client shall indemnify Arbor Centre from and against all costs and disbursements incurred by Arbor Centre in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Arbor Centre's Contract default fees, and bank dishonour fees).
- 19.3 Further to any other rights or remedies Arbor Centre may have under this contract, if a Client has made payment to Arbor Centre, 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 Arbor Centre 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.
- 19.4 Without prejudice to Arbor Centre's other remedies at law Arbor Centre shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Arbor Centre shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Arbor Centre becomes overdue, or in Arbor Centre'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 Arbor Centre.





- (c) 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
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## **20. Cancellation**

- 20.1 Without prejudice to any other remedies Arbor Centre may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Arbor Centre may suspend or terminate the supply of Services to the Client. Arbor Centre will not be liable to the Client for any loss or damage the Client suffers because Arbor Centre has exercised its rights under this clause.
- 20.2 Arbor Centre may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice Arbor Centre shall repay to the Client any money paid by the Client for the Services. Arbor Centre shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Client cancels delivery of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by Arbor Centre as a direct result of the cancellation (including, but not limited to, any loss of profits).

## **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. 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. Privacy Act 1988**

- 22.1 The Client agrees for Arbor Centre to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Arbor Centre.
- 22.2 The Client agrees that Arbor Centre may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
  - (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 22.3 The Client consents to Arbor Centre being given a consumer credit report to collect overdue payment on commercial credit.
- 22.4 The Client agrees that personal credit information provided may be used and retained by Arbor Centre for the following purposes (and for other agreed purposes or required by):



- (a) the provision of Services; and/or
  - (b) analysing, verifying, and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Services.
- 22.5 Arbor Centre may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report.
  - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 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 Arbor Centre is a current credit provider to the Client.
  - (c) whether the credit provider is a licensee.
  - (d) type of consumer credit.
  - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested).
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Arbor Centre has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of Arbor Centre, the Client has committed a serious credit infringement.
  - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 22.7 The Client shall have the right to request (by e-mail) from Arbor Centre:
- (a) a copy of the information about the Client retained by Arbor Centre and the right to request that Arbor Centre correct any incorrect information; and
  - (b) that Arbor Centre does not disclose any personal information about the Client for the purpose of direct marketing.
- 22.8 Arbor Centre will destroy personal information upon the Client's request (by e-mail) 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 Client can make a privacy complaint by contacting Arbor Centre via e-mail. Arbor Centre will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 23. Construction Contracts Act 2004**
- 23.1 At Arbor Centre's sole discretion, if there are any disputes or claims for unpaid Services then the provisions of the Construction Contracts Act 2004 may apply.
- 23.2 Nothing in this contract is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act where applicable.



## 24. Service of Notices

- 24.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person.
  - (b) by leaving it at the address of the other party as stated in this contract.
  - (c) by sending it by registered post to the address of the other party as stated in this contract.
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission.
  - (e) if sent by email to the other party's last known email address.
- 24.2 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.

## 25. Trusts

- 25.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust (Trust) then whether or not Arbor Centre may have notice of the Trust, the Client covenants with Arbor Centre as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund.
  - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
  - (c) The Client will not without consent in writing of Arbor Centre (Arbor Centre will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events.
    - (i) the removal, replacement, or retirement of the Client as Trustee of the Trust.
    - (ii) any alteration to or variation of the terms of the Trust.
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.

## 26. General

- 26.1 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.
- 26.2 These terms and conditions and any contract to which they apply shall be governed by the laws Western Australia in which Arbor Centre has its principal place of business and are subject to the jurisdiction of the Perth Courts in Western Australia.
- 26.3 Subject to clause 17, and only if the cause is not attributable to the neglect and /or wilful misconduct of Arbor Centre, Arbor Centre 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 Arbor Centre of these terms and conditions (alternatively Arbor Centre's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 26.4 Arbor Centre may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 26.5 The Client cannot licence or assign without the written approval of Arbor Centre.



- 26.6 Arbor Centre may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Arbor Centre's subcontractors without the authority of Arbor Centre.
- 26.7 The Client agrees that Arbor Centre 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 Arbor Centre to provide Services to the Client.
- 26.8 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.
- 26.9 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.

