

Standard Terms and Conditions of Contract



1. Definitions and Interpretation

In these terms and conditions:

- (a) **Adhesive** means any item sticking itself to a surface including but not limited to tapes, blue-tack, gums, and resins;
- (b) **Client** means the party so named on the Quotation for which the painting or decorating services are being completed for;
- (c) **Painting Contractor** means the party providing the painting or decorating services;
- (d) **Parties** means the Contractor and the Client;
- (e) **Site** means the location where the Works shall be carried out; and
- (c) **Works** means the painting or decorating services as described within the Quotation.

2. Agreement

The Painting Contractor is engaged by the Client to carry out and complete the Works pursuant to the terms of this Contract. In consideration for the performance of the Works, the Client will pay to the Painting Contractor the Contract Price by the time indicated by this Contract.

This **Contract** is comprised of:

- (a) these standard terms and conditions;
- (b) the Quotation; and
- (c) any other referenced documents.

This Contract constitutes the entire agreement between the parties for the Works and shall replace any previous agreements, discussions or understanding, whether verbal or in writing.

Terms defined by the Quotation have the same meaning in these Standard Terms and Conditions of Contract and vice-versa.

3. Materials

The Client acknowledges that it has read the Quotation and consents to the use of all specific materials and products listed within the Quotation, selected by the Client and/or by the Painting Contractor using skill and experience, and all incidental products reasonably necessary in carrying out the Works, irrespective of the content of any standards or manufacturer's recommendations.

4. Home Building Contracts Act

Where the value of the Works exceeds \$7,500, the Client acknowledges that it has received or accessed a copy of the 'Notice for the Home Owner' pursuant to the *Home Building Contracts Act 1991 (WA)* (the **Act**), from the Painting Contractor, (irrespective of the form in which it was supplied) prior to signing the Quotation.

5. Site Access

The Client must provide access to the Site sufficient for the commencement of the Works by the Site Access date indicated on the Quotation, or where no date is specified, within 28 days of the date of this Contract.

Should the Client not provide access by this time, the Painting Contractor shall be entitled to revise the Quotation to accommodate any changes in circumstance (including but not limited to rise and fall of costs), or may elect to

terminate the Contract, at its sole discretion. If the Painting Contractor elects to terminate, the Client shall have no claim against the Painting Contractor and shall indemnify the Painting Contractor against any costs or losses incurred.

The Client shall ensure power and water are supplied at the Site, in addition to anything specified on the Quotation, by the Site Access date and at all times during the performance of the Works.

6. Removal of Materials

Any materials, chattels or fixtures at the Site which are removed from the Site as a necessary consequence of carrying out the Works and which are determined by the Parties, or by direction of the Client, to not be reinstated as part of or immediately following the Works, become the property of the Painting Contractor at the completion of the Works unless otherwise agreed in writing by the Parties.

7. Removal of Rubbish

The Painting Contractor shall be responsible, at its own cost, for the removal and disposal of all rubbish from the Site created as a necessary consequence of carrying out the Works, unless otherwise agreed by the Parties or otherwise specified within the Quotation.

For the avoidance of doubt, asbestos or other hazardous materials at the Site, whether known prior to the date of this Contract or discovered during the course of the Works, shall be removed by the Client at its own cost.

8. Assignment

The Painting Contractor may assign any part (but not the whole) of the Works to a subcontractor at its sole discretion. Any part of the Works completed under such assignment will have the same warranties under this Contract attached, as if the Painting Contractor had completed that part of the Works itself.

9. Foundation and Structures

The Client warrants that all foundations, walls or other structures erected by anyone other than the Painting Contractor, which are associated with the Works, shall be fit for purpose, free of defects and prepared to any standard specified within the Quotation.

If, during the course of the Work, the Painting Contractor discover any defects in any part of the Premises or in any existing installation on the Premises which in the reasonable opinion of the Painting Contractor must be repaired before the Work can commence or continue, the Painting Contractor may, if appropriate, suspend work on the job and immediately notify the Client of the suspension and the reason therefore and submit its price for such additional work to the Client. Within 3 days the Client shall:

- (a) provide an instruction (to be confirmed in writing), directing the Painting Contractor to carry out the extra work, with the extra work to form a Variation to the Contract pursuant to Clause 10; or

- (b) provide written confirmation that it shall carry out the extra work itself such that the Work can proceed without undue delay, or
- (c) provide written instruction directing the Painting Contractor to progress the Works regardless of the defect(s).

Failure of the Client to provide such instruction or confirmation to the Painting Contractor shall mean that this Contract will be at an end and the Painting Contractor will be entitled to payment for all work done and materials supplied at the date of determination of the Contract.

The Painting Contractor shall not be liable for any loss or damage of any kind resulting from insufficient or defective foundations, walls or other structures in the vicinity of the Works. Further, the Client indemnifies the Painting Contractor for all costs, loss and damages of any kind that may be incurred as a direct or indirect result of defective structures.

10. Variations

If, following the execution of this Contract, the Client varies the scope of the Works in quantity, quality, character or by any other means, or if the Client provides information not accessible at the date of this Contract that would cause the quantity, quality or character of the Works to differ in any way, then the change to the Works shall be valued by the Painting Contractor and added or deducted from the Contract Price.

11. Payment

The Painting Contractor shall make claims for payment by submitting invoices to the Client from time to time for completed portions of the Works. The Client must make payment by the date stated on the invoice, or where no date is specified, within 14 days from the date of the invoice.

The Painting Contractor shall invoice for the Contract Price, as adjusted by clause 10 or elsewhere provided for in this Contract, and any other claims for costs, loss or damage for which the Client has indemnified the Painting Contractor for pursuant to this Contract.

Should the Client fail to make payment under the Contract and that failure continues for more than two days, the Painting Contractor may, at its discretion, wholly or partially suspend any portion of the Works still to be completed under the Contract until the failure is rectified.

Interest shall accrue on all overdue payments at a rate of 12% per annum.

If for any reason the Contract is determined prior to the Works being brought to completion, then the Client shall be required to make payment for the portion of the Works completed and any materials purchased (plus any other amounts that may be required elsewhere in this Contract or at law).

12. Warranties

The Painting Contractor warrants that, subject to the conditions of this Contract, it will repair any defective workmanship which become apparent within six months from the date of completion of the Works.

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The warranty shall not extend to areas of the Works that have been subject to any of the following within the warranty period: yellowing of alkyd enamel paints¹, wilful damage, negligence, improper care and maintenance, excessive wear and tear, abnormal environmental conditions, non-compliance with any care instructions provided by the Painting Contractor, alteration of the Works, unauthorised repair of the Works, mechanical damage or use of adhesives. The Client shall have no claim against the Painting Contractor for any Works subject to the abovementioned conditions.

The Client shall indemnify the Painting Contractor against all costs incurred in inspecting the Works during the warranty period if any of the abovementioned conditions are discovered.

13. Insurance, Indemnity and Liability

The Painting Contractor shall maintain workers' compensation insurance sufficient to cover liabilities arising out of claims, loss or proceedings in connection with its legal obligations (whether under statute or common law) to its employees.

The Client shall indemnify the Painting Contractor against any claim or from any liability (and releases the Painting Contractor from, and waives, all claims against them) arising out of, in relation to or in connection with (whether directly or indirectly):

- (a) the loss of or damage to any property or equipment owned or provided by the Painting Contractor, the Client or any third party; and
- (b) any personal injury, illness, disease or death of the Painting Contractor, the Client or any related third party but only to the extent such injury, illness, disease or death is caused or contributed to by an act or omission of the Client.

The total aggregate liability owed by the Painting Contractor to the Client for any damages, claims, losses and expenses arising out of this Contract, or otherwise at law, is limited to 10% of the Contract Price.

14. Protection of the Works

Care of the Works shall be the responsibility of the Painting Contractor whilst performing the Works, except as otherwise expressed within this Contract.

Risk in (and liability for) the Works performed and/or materials supplied shall pass to the Client as soon as the relevant portion of the Works is carried out, or the materials supplied, as the case may be, irrespective of whether payment has been made for such Works or materials.

15. Time and Completion

The Painting Contractor shall proceed with the Works in a reasonably expeditious manner, provided sufficient access to the Site has been provided by the Client.

If a date for completion has been agreed between the parties then the Painting Contractor shall use all reasonable means to bring the Works to completion by this date, however will not be responsible for delays caused by adverse weather conditions; labour disputes; acts of God; force majeure; civil disturbances; material or labour shortages; changes in quantity, character or quality of the Works as required by the Client; or any other delay outside the reasonable control of the Painting Contractor and the Client shall have no claim whatsoever against the Painting Contractor for any such delay.

16. Trade Practices Act and Fair Trading Act

Nothing in these Terms and Conditions excludes, restricts or modifies any condition, warranty, right or remedy conferred on the Client by the *Trade Practices Act 1974* (Cth) (the **TPA**) or any other applicable law that cannot be excluded, restricted or modified by agreement. To the fullest extent permitted by law, the Painting Contractor's liability for a breach of a condition or warranty implied by Div 2 of Part V of the TPA (other than s69) is limited to:

- The supplying of the Works by the Painting Contractor again; or
- The payment of the cost as determined by the Painting Contractor of having the Works supplied again.

17. Dispute Resolution

If a dispute or difference of any kind arises between the parties in connection to this Contract, the aggrieved party shall give written notice of the existence of the dispute to the other party. The parties shall then meet within seven days of receipt of the written notice in a genuine attempt to resolve the dispute. If the dispute remains unresolved after this meeting, a second meeting shall be convened within a further fourteen days in a genuine attempt to resolve the dispute.

If the dispute remains unresolved after the second dispute, then either party may escalate the dispute or difference by whichever means they see fit, but must not do so prior to the exhaustion of the above dispute resolution process. Non-payment by the Client is excepted from the above process and the Painting Contractor may take any lawful steps necessary to expedite an overdue payment, including actions pursuant to this Contract and the *Construction Contracts Act 2004* (WA) (the **CCA**).

The Master Painters & Decorators Australia (MP&DA) shall be the prescribed appointer to which any application for adjudication under the CCA shall be served. Should MP&DA not be able to appoint an adjudicator in accordance with s28 of the CCA for any reason, then the application shall be served on the Electrical and Communications Association of Western Australia, c/o the National Electrical and Communications Association (NECA).

18. Termination

Notwithstanding any other provision of this Contract, the Painting Contractor may terminate this Contract for substantial breach of the Contract by the Client, which shall include (but not be limited to) any instance of insolvency of the Client. The Painting Contractor shall also be entitled to terminate for convenience.

The Client shall be entitled to terminate this Contract for any substantial breach committed by the Painting Contractor which is not able to be remedied in any way, but only ten days after providing written notice of its intention to do so.

All clauses capable of surviving termination of this Contract shall remain in force after the date of determination.

19. Miscellaneous

(a) Waiver

An act or omission constituting a waiver of a provision of this Contract shall not operate as a continuing waiver of that provision nor a waiver of any other provision of the Contract.

(b) Severability

Any provision of the Contract that is or becomes illegal, invalid or unenforceable in any jurisdiction, is to be read down for the purposes or that jurisdiction, if possible, so as to the valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions or affecting the validity or enforceability of that provision in any other jurisdiction.

(c) Perceived disadvantage

Provisions of the Contract must not be construed to the disadvantage of a party merely on the basis of which party prepared or inserted such provision.

(d) Notice

The service of any notice required under this Contract or of any legal or court documents may be effected by forwarding by prepaid post to the last known address of the Client.

(e) Applicable Law and jurisdiction

The law applicable in Western Australia governs this Contract and each party submits to the exclusive jurisdiction of the courts of that state.

(f) Costs

Each party shall bear its own costs of any contractual or legal matters, unless otherwise expressly provided for in a determination or judgement.

¹ Refer to Building Commission Industry Bulletin IB 087/2017 for details.