

1. Purchase Order

a. The Purchase Order (including any attachments listed therein) together with these Conditions, constitutes the entire agreement between the Purchaser and Supplier in respect of the Goods and/or Services (**Agreement**). The Supplier agrees that it does not rely on any other document, information or thing given to it, or any representation, warranty, promise, statement, negotiation or letter made by the Purchaser, its officers, agents, employees or contractors in entering into this Agreement.

b. If any one or more of these Conditions are determined to be invalid, illegal or unenforceable in any respect, whether wholly or in part, the validity, legality and enforceability of the remaining Conditions of the Agreement, to the greatest extent possible, are not affected. This clause 1.b. does not apply where enforcement of the provision of this agreement in accordance with this clause would materially affect the nature or effect of the parties' obligations under this agreement.

c. The Purchase Order constitutes the sole description of the Goods and Services and the Purchaser accepts no responsibility for the delivery of any goods or services not specified on the Purchase Order.

d. Any variation to the Agreement (or these Conditions) will only be deemed to occur if it is in writing and signed by an authorised officer of the Purchaser and by an authorised offer of the Supplier.

e. Any failure by the Purchaser to insist upon strict performance of any term or condition of the Agreement or these Conditions is not to be deemed to be a waiver of any of the Purchaser's rights or remedies under either the Agreement or generally at law, or of any rights arising out of any subsequent act or default of the Supplier. Acceptance of any Goods and/or Services purported to be supplied pursuant to the Agreement does not imply agreement to any alteration of the Agreement in any respect or waives any of the Purchaser's rights arising out of any of the Supplier's prior or subsequent act, default, or failure to comply with the Agreement. A provision or a right created under this Agreement or these Conditions may not be waived except in writing signed by the party granting the waiver.

f. To the extent the Supplier's terms and conditions are supplied with the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of the Purchase Order or Agreement (even if any representative of the Purchaser signs those terms and conditions or annexes the terms and conditions to this Purchase Order) and these Conditions shall apply. If notwithstanding this clause the Supplier's terms and conditions are found to apply, if there is any inconsistency between these Conditions and the Supplier's terms and conditions, then these Conditions shall prevail.

g. The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership and no contractual relations will arise between any of the Supplier's employees, agents or subcontractors and the Purchaser as a result of the Supplier and Purchaser's relationship, and the Supplier does not have the right or authority to act on behalf of or bind the Purchaser unless the Supplier has been expressly authorised by the Purchaser in writing. The Supplier must provide its own tools and plant and equipment at its own cost.

2. Acceptance

a. The Agreement will come into effect on the earlier of:

(1) the Supplier providing written or verbal confirmation to the Purchaser that it accepts the order in the Purchase Order; or

(2) the Supplier undertakes delivery of the Goods to the Delivery Address or commences provision of the Services at the Delivery Address.

b. Qualifications or amendments to the Purchase Order made or communicated by the Purchaser or the Supplier shall not constitute acceptance or form part of the Agreement unless agreed by the Purchaser in writing and signed by an authorised officer of the Purchaser.

c. If the Supplier does not provide a written confirmation of acceptance to the Purchaser within 5 Business Days of the date of the Purchaser Order (or such shorter time as specified in the Purchaser Order) and the Supplier has not delivered the Goods or has commenced delivery of the Services at the Delivery Address, then the Purchaser may by notice to the Supplier withdraw the Purchase Order and the Purchaser will have no further obligations to the Supplier.

3. Supply of Goods or Services

The Supplier must supply to Purchaser the Goods and/or perform the Services in accordance with the Agreement.

4. Time for Performance

The Supplier must supply the Goods and/or Services in accordance with the terms of Agreement by the Delivery Date.

5. Title and Risk

a. Title in the Goods passes to the Purchaser upon the earlier of payment of the Price or delivery of the Goods to the Delivery Address.

b. Risk in the Goods passes to the Purchaser when the Goods are delivered to the Delivery Address free from any Defects. The Goods must be delivered and signed off by an authorised officer of the Purchaser.

c. If the Purchaser pays any deposit or other part payment of the Price prior to delivery of the Goods to the Purchaser, then the Supplier grants a Security Interest to the Purchaser over the Goods (and any materials purchased for

incorporation into the Goods) to secure the obligations of the Supplier to the Purchaser under or in respect of the Agreement.

d. The Supplier shall not grant any other person any Security Interest in the Goods, and shall not part with possession of the Goods, except by delivery to or at the direction of the Purchaser.

e. The Supplier consents to the Purchaser registering a Security Interest in respect of the Goods. The Supplier shall sign all documents and provide all information and assistance required to affect that registration. The Supplier waives the right to receive a verification statement in relation to any such registration.

6. Price

a. The Purchaser shall pay the Supplier the Price for the Goods and/or Services as provided in these Conditions or the Agreement.

b. The Price is inclusive of all costs incurred by the Supplier in the supply of the Goods and/or performance of the Services including all charges for taxes, packing, insurance and delivery of the Goods, internal costs including wages, overtime and penalties and costs of subcontractors and the cost of any items used or supplied in the performance of the Services.

c. The Price is inclusive of all taxes and duties, except GST. The Purchaser will only be liable for the GST stated on the Purchase Order when the Supplier complies with condition 7e and condition 18 of these Conditions.

d. The Purchaser will only be required to make payment for the Goods and/or Services when the supply of the whole of any Goods and Services as identified in the Purchase Order is complete to the satisfaction of the Purchaser as set out in these Conditions.

e. Payment shall not constitute an acceptance by the Purchaser that the Services or Goods are not Defective and shall not in any way effect the Purchaser's rights under the Purchase Order including but not limited to those rights set out in clauses 8 and 9.

7. Invoicing/Payment

a. The Supplier is to submit its tax invoice or credit note in respect of the delivered Goods and/or Services, which shows the quantity of Goods and/or Services supplied, the Price applying to those Goods and/or Services, the Purchase Order Number, site supervisor name and delivery address. The Supplier is only entitled to submit an invoice as provided in condition 6.d. The tax invoice must show units of measure and Price consistent with the Purchase Order. The Supplier must provide such additional information which the Purchaser requires in order to verify the entitlement of the Supplier to the amount claimed.

b. All tax invoices are to be forwarded to the address of the Purchaser set out in the Purchase Order unless advised otherwise

c. Unless otherwise stated in the Purchase Order, the Purchaser is to pay the amount properly claimed by the Supplier (except to the extent that any invoice is in dispute) within forty-five (45) days from receipt of the tax invoice from the Supplier, but subject as provided in these conditions.

d. In addition to any other rights it may have under these Conditions or otherwise, the Purchaser may deduct from or set-off against any monies due or that become due to the Supplier:-

(1) all costs, damages and expenses which the Purchaser may have paid for or incurred or is likely to pay or incur in connection with the supply of Goods and/or Services for which the Supplier is liable and which remain unpaid by the Supplier; and

(2) all debts owed by the Supplier to the Purchaser and which remain unpaid on any account whatsoever.

e. The Supplier is required to fully comply with all requirements of the *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)*. In particular:

(1) the Supplier must evidence to the Purchaser in writing its registration for the GST Act and its valid Australian Business Number; and

(2) all invoices issued to the Purchaser by the Supplier pursuant to clause 7 of these Conditions must be in an Australian Taxation Office approved form of tax invoice.

f. Where an amount is disputed, the Purchaser may pay only the undisputed amount and the payment of the undisputed amount shall not constitute an admission by the Purchaser as to the disputed amount.

g. The Purchaser is entitled to return to the Supplier, unpaid, any tax invoice that fails to fully comply with the Agreement and the Supplier must submit a replacement tax invoice which complies with the Agreement before it is entitled to payment. For the avoidance of doubt – the Invoice amount must not exceed the face value of the Purchase Order. All agreed variations will be by separate Invoice which match the amount of the applicable variation Purchase Order(s).

h. Notwithstanding any other term or condition in the Agreement, it is a condition precedent to the Supplier's entitlement to payment for any claims or amount that the Supplier complies with the requirements contained in this clause and these Conditions.

8. Warranties/Quality

a. The Supplier warrants that the Goods and/or Services will match the description (if any) referred to in the Purchase Order.

b. If the Supplier gave the Purchaser a sample of the Goods or a demonstration of the Services, the Goods and/or Services must be of the same nature and quality as the sample or demonstration given.

c. The Supplier warrants that Goods and/or Services will be fit for the purpose for which Goods and/or Services of the same kind are commonly supplied or bought and for any other purpose which the Purchaser specifies.

d. The Supplier warrants that the Goods must be of merchantable quality, unencumbered and, unless otherwise specified in the Purchase Order, will be new.

e. The Supplier warrants all Services provided by the Supplier must be undertaken by persons who are appropriately licensed, qualified and/or trained to provide those Services.

f. The Supplier will also enforce (at the Supplier's cost) all Manufacturer's Warranties for the benefit of the Purchaser and if requested by the Purchaser will assign all Manufacturer's Warranties to the Purchaser. The Supplier must if requested by the Purchaser advise the Purchaser of the terms of the Manufacturer's Warranties.

g. The above warranties are in addition to the warranties provided or implied by law.

9. Remedies

a. If, during the Warranty Period, any of the Goods or Services are found to be Defective, the Purchaser may:

(1) return the Defective Goods to the Supplier at the Supplier's cost;

(2) reject the Defective Services;

(3) repair or make good the Defective Goods and recover the costs of repair, remedy or replace from the Supplier; or

(4) re-perform or make good the Defective Services and recover the costs of repair, remedy or re-performance from the Supplier.

b. The Supplier must at its cost if required by the Purchaser:

(1) repair or replace the Defective Goods;

(2) re-perform or make good the Defective Services; or

(3) reimburse the Purchaser for any expenses incurred in repairing, re-performing, replacing or making good (as the case may be) any Defective Goods or Services at the Supplier's cost, if requested to do so by the Purchaser.

c. The exercise by the Purchaser of any of its rights under conditions 9a and 9b does not prejudice the Purchaser's rights to claim damages at law or under the indemnity in condition 10.

10. Indemnities

a. The Supplier must indemnify The Purchaser, its officers, employees, shareholders from all claims and losses and costs arising from:

(1) injury to or death of any person arising during the supply of the Goods and or Services except to the extent the claim for such injury or death arises solely as a result of the negligence of the Purchaser;

(2) damage to or destruction of any property during the supply of the Goods or Services except to the extent the claim for such injury or death arises solely as a result of the negligence of the Purchaser;

(3) any breach by the Supplier of the Agreement or any warranty in these Conditions or which is implied by law;

(4) any delay by the Supplier.

b. The Supplier acknowledges that failure by it to supply the Goods and or the Services in accordance with the Agreement and these Conditions may result in claims by the Purchaser's own clients and customers and the indemnity in this clause includes (but is not limited to) claims against the Purchaser by its customers.

c. Where any term of this Agreement expressly requires performance by the Supplier to occur at, within or by a specified period of time, performance at, within or by that specified period is of the essence.

11. Insurance

a. The Supplier must obtain and maintain the following insurances:

(1) Materials, plant and equipment insurance, including all constructional plant and equipment, the Goods to be supplied for not less than full replacement value;

(2) Transit (all risk) insurance covering transit, loading and unloading of Goods for not less than full replacement value;

(3) Workers compensation and employer's liability insurance, covering all claims and liabilities in respect of any statutory or common law liability for the death, injury or illness of or to any person employed by (or deemed to be employed by), the Supplier;

(4) Public and products liability insurance for an amount not less than \$5,000,000 any one occurrence (and in the annual aggregate in respect of products liability insurance) if the Supplier is supplying Goods; and

(5) any other insurance which is required by law.

b. The Supplier must at the request of the Purchaser provide certificates of currency and other evidence that the insurance required by this condition 11 is in effect.

12. Condition of the Site

- a.** The Supplier acknowledges that it has been given the opportunity of inspecting the Site prior to accepting the Purchase Order. The Supplier shall not be entitled to any increase in the Price or other payment arising from any matter or condition of the Site.
- b.** The Supplier must at its own cost provide its own electricity, water and other services on the Site. If the Purchaser provides any such services the Supplier will use them at its own risk.
- c.** The Supplier must while it is providing the Services on the Site comply with all laws (including relating to health and safety). The Supplier must leave the Site in a safe and tidy condition after delivering the Goods and Services.
- d.** The Supplier must co-operate with and co-ordinate its Services with activities of the Purchaser and the Purchaser's other contractors and suppliers on the Site. The Supplier shall not be entitled to additional costs or charges for complying with this provision.
- e.** The Supplier must at its cost comply with all directions by the Purchaser or its representative in relation to the Site including undertaking any safety training.

13. Variations, Suspension and Extensions of Time

- a.** The Purchaser shall not be liable for the costs of any variations unless the Supplier has provided the Seller a written quote for the costs of the variation and the Purchaser has accepted the quote in writing. If the Supplier and the Purchaser have not agreed the cost of any variation, the Purchaser may at its discretion acquire the Goods and or Services for other provider.
- b.** When the Supplier provides a quote for a variation, it must act in good faith and must not charge in excess of any rates it has previously quoted to the Purchaser.
- c.** The Purchaser may defer the Delivery Date on one or more occasions at its sole discretion.
- d.** The Purchaser may suspend the supply of the Goods and or Services for up to 6 months.
- e.** If the suspension continues beyond 6 months or the deferment in the Delivery Date continues beyond 6 months past the Delivery Date specified in the Purchase Order (unless the Purchaser and Supplier have agreed otherwise), then the Agreement shall be deemed to have been terminated under condition 16 of these Conditions. If the Purchaser has suspended the delivery of the Goods and or Services this shall not subsequently prevent the Purchaser from terminating pursuant to condition 16. The Purchaser shall re-commence the supply of the Goods and or Services when the Purchaser gives notice to the Supplier. The Supplier shall be entitled to an extension of time for completion of the delivery of the Goods and or the Services equivalent to the period of suspension but the Supplier shall

not be entitled to any additional costs or the costs of mobilization or re-mobilisation.

f. The Supplier shall not be entitled to any extension of time for supply of the Goods or Services without the prior written approval of the Purchaser. If, withstanding this clause, the Supplier is found to be entitled to an extension of time, the extension shall be for such period as is reasonable in order for the Supplier to complete delivery of the Goods and or Services and time under the Agreement shall not be at large. Time is of the essence.

g. The Purchaser may reduce the quantity of Goods to be supplied or the amount or scope of Services to be provided by the Supplier by giving written notice to the Supplier. If there is a reduction in Goods or Services then the Price shall be reduced by the relevant unit price (in the case of Goods) or by reference to the rate (in the case of Goods) in respect of the cancelled Goods or Services. If there is no individual unit price or rate, then the Price shall be reduced pro-rata.

14. Jurisdiction

The Agreement and these Conditions shall be governed by and construed with reference to the laws of the State of Western Australia. The parties submit to the exclusive jurisdiction of the Western Australian Courts. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

15. Dispute Resolution

- a.** If a dispute or difference arises between the Purchaser and the Supplier in respect of any fact, act, matter or thing arising out of or in any way connected with the Agreement or these Conditions and one party requires the dispute or difference to be resolved, then that party shall promptly give the other party a written notice giving details of the dispute.
- b.** Within 21 days of a party receiving a notice referred to in clause 15a, the Purchaser and the Supplier and/or their delegates must meet and attempt to resolve the dispute in good faith.
- c.** If, within 14 days of the meeting referred to in clause 15b, the dispute is still not resolved, then, either party may proceed to litigation. Nothing in this clause shall however prevent a party applying for an injunction.

16. Termination for Any Reason

a. The Purchaser may for any reason cancel all or any portion of a Purchase Order or Agreement at any time by giving notice to the Supplier. In the event of cancellation of Goods, the Purchaser will only be liable for the cancellation of any custom-made Goods for which the Purchaser does not take delivery. The Purchaser shall not be required to give the Supplier any reason for the Purchaser exercising its rights under this condition. If the Purchaser terminates all or any portion of the Purchase Order or the Agreement pursuant to

this clause it shall be entitled to obtain the Goods or the Services from another provider.

b. In the event that the Purchaser exercises its rights under this clause the Purchaser's liability for such Goods shall be limited to the lesser of:

(1) the Supplier's direct costs for raw materials, components, work in progress and any finished units on hand (without any mark-up) at the time of such cancellation that are attributable to the cancelled portion of the Purchase Order; or

(2) the price per finished unit, after giving effect to any discount the Purchaser would otherwise be entitled to, for the cancelled portion of the Purchase Order.

c. The Purchaser's liability for cancellation of Services, shall be the lesser of:

(1) the Supplier's actual cost of the services rendered prior to termination; or

(2) the Price for the Services cancelled. If any hourly or other time-based rate for Services is specified in the Purchase Order, such rate will be used in determining the Supplier's actual costs. In no case shall the Purchaser be liable for the Supplier's lost profits as a result of such cancellation.

d. Upon receipt of a cancellation notice, the Supplier will, unless otherwise directed, cease work and follow Purchaser's directions as to disposal of work in progress and finished goods (which the Purchaser may require be delivered to the Purchaser). The Supplier must take all reasonable steps to mitigate its loss and costs.

e. The rights set out in this clause comprise the Supplier's sole entitlements upon cancellation of the Purchase Order. The Supplier release the Purchaser from any and all other claims.

f. Termination by the Purchaser pursuant to this clause does not release the Supplier from any breach of the Agreement or warranty which occurred prior to termination. The provisions of this clause 16 do not apply in the case of termination for breach pursuant to condition 17.

17. Termination for Breach

If the Supplier is in breach of any of the provisions of the Agreement or these Conditions, the Purchaser may by notice to the Supplier require that the Supplier remedy the breach within 7 days. If the Supplier fails to remedy the breach within 7 days, the Purchaser may by notice to the Supplier terminate the Agreement. Termination shall not prejudice or affect any of the Purchaser's rights to damages, indemnity or other rights.

18. Goods and Services Tax (GST)

a. Unless otherwise stated, the Price or any other amounts payable by the Purchaser to the Supplier, is exclusive of GST.

b. If a Supply under this agreement is subject to GST, the Purchaser will pay to the Supplier an additional amount equal to the amount of the Price multiplied by the prevailing GST rate.

c. The additional amount under clause 18.b is payable at the same time as the amount payable for the Supply is to be paid. However, the GST need not be paid until the Supplier provides a Tax Invoice to the Purchaser.

d. If the amount of GST payable in accordance with clause 18c is found to differ from the amount paid in relation to a Supply:

(1) If the amount of GST paid is more that is required under the GST law the Supplier shall immediately refund the excess amount to the Purchaser without set-off;

(2) If the amount of GST paid is less than is required under the GST law, the Purchaser shall pay the Supplier the difference.

e. For the purposes of calculating further variations under clause 18.d, any additional amount referred to in clause 18.b is taken to be amended by the amount of any earlier variation made under clause 18d.

f. If either the Purchaser or the Supplier is entitled to be reimbursed or indemnified under the Agreement, the amount to be reimbursed or indemnified by either party is to be the GST exclusive amount. For the avoidance of doubt, the amount of any reimbursement does not include any amount attributable to GST for which either the Purchaser or the Supplier is entitled to an Input Tax Credit.

19. Confidentiality

The Supplier must keep confidential all information concerning the business of the Purchaser and the prices which it supplies Goods and Services to the Purchaser, except that nothing shall preclude disclosure which is necessary for the Supplier to:

- comply with any legal obligations;

- take legal advice on or enforce a provision of the Agreement; or

- take out or maintain insurance required by these conditions.

This clause shall survive termination of the Agreement.

20. Health and Safety and other laws and policies

The Supplier must at its cost comply with all health and safety laws and other laws. The Purchaser must comply with all policies relating to the supply of Goods or Services notified to it by the Purchaser.

21. Notices

All notices under this Agreement shall be in writing. Notices may be given:

(a) by letter which must be delivered by first class post or by hand; or

(b) by email to the email address which the relevant party has notified the other of, or which the Parties use in the conduct of their respective business.

Notices given by letter shall be deemed to be given on third Business Day after posting.

Notices sent by email shall be deemed to have been given on the earlier of the sender receiving an automated message confirming delivery or, provided no automated message is received stating that the email has not been delivered, three hours after the email was sent by the sender, such time to be determined by reference to the device from which the email was sent.

Emails sent after 5 pm on a Business day shall be deemed to have been sent on the next Business Day at 10 am.

If an email is sent on a day which is not a Business day it shall be deemed to have been received on the next Business Day at 10 am.

22. Definitions

Agreement has the meaning defined in condition 1a.

Business Day means a day on which banks are open for business in Perth other than a Saturday, Sunday or public holiday.

These Conditions and **Conditions** mean these terms and conditions.

Defective or Defects means Goods and/or Services (or any aspect of them) which are not in accordance with the Purchase Order, these Conditions or which are damaged, deficient, faulty, inadequate or incomplete or which do not comply with warranties implied by law.

Delivery Address means the address described as the address to Job Address in the Purchase Order or address specified in the call up email.

Delivery Date means the delivery date specified on the Purchase Order or date specified in the call up email.

Goods means the goods, if any, described on the Purchase Order.

"GST", "GST law" and other terms used in clause 18 have the meanings given to them by the *A New Tax System* (Goods and Services Tax) Act 1999 (as amended from time to time).

Manufacturers Warranties means warranties which are given (including warranties which are implied) by the manufacturer or other person who supplies the goods or component parts to the Supplier whether under this Agreement or otherwise.

Price means the price set out in the Purchase Order which is exclusive of GST, but is inclusive of all other costs and charges.

Purchaser means Chross Homes & Developments.

Purchase Order means the written Purchase Order issued by the Purchaser in the form prepared by the Purchaser (which may also be in electronic form).

Security Interest has the meaning defined in the *Personal Property Securities Act 2009* (Cth).

Services means the services, if any, described in the Purchase Order.

Site means the Delivery Address or any other location specified to the Supplier by the Purchaser to provide Goods or Services.

Supplier means the supplier described in the Purchase Order.

Warranty Period means the period of 12 months commencing on the date of delivery of the Goods and/or 12 months from the date on which the Services are performed. The Warranty Period will be extended where Manufacturer's Warranties apply to the goods (or component parts) and the Manufacturer's Warranties are for a period longer than 12 months.